

THE INCREASING IMPORTANCE OF TRANSFER PRICING REGULATIONS – A WORLDWIDE OVERVIEW

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The Increasing Importance of Transfer Pricing Regulations – a Worldwide Overview

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Keywords: corporate taxation, transfer pricing, multinational companies

JEL Classification: F23, H25, K34

Abstract

As the number of multinational enterprises increases, the number of transactions between entities belonging to the same multinational group rises as well. Intercompany transactions generally offer the opportunity to shift income from one jurisdiction to the other. Income shifting can be driven by tax aspects, for instance a tax rate differential, or by firm-specific tax attributes like tax losses. At the same time, profit shifting imposes risk to governments as it may reduce tax revenues. More and more governments are therefore introducing and extending transfer pricing regulations in order to combat profit shifting through intercompany transactions. This study examines 44 countries and analyses the development of different aspects of transfer pricing regulations over a time period of nine years (2001-2009). In order to show the differences of the regulations in a single measure, an attempt is made to categorize transfer pricing regulations regarding their stringency and impact. The results of the categorization confirm not only the increasing importance of transfer pricing regulations, but also offer very useful and valuable information for future research on the influence of transfer pricing regulations on corporate decisions.

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1 Introduction

Over the past decades, the globalization of markets and firms was accompanied by a development of powerful information technology and efficient communication systems. As a consequence multinational corporations have established highly integrated processes leading to an increasing amount of intercompany transactions.¹ Such transactions often involve affiliates located in two different jurisdictions and therefore offer the possibility to shift profits within the multinational company and across borders. Among other reasons, profit shifting may be favourable for tax purposes as it influences taxable income. Generally, profits are shifted from high tax jurisdictions to low tax jurisdictions in order to benefit from tax rate differentials. Other objectives for profit shifting are the utilization of tax attributes, e.g. tax losses that expire after a certain number of years², or tax incentives as well as subsidies.³

As profit shifting directly impacts tax revenue, it is not surprising that national tax authorities try to counter such behaviour. Many countries have introduced anti-avoidance measures in order to prevent taxpayers from adjusting transfer prices for tax purposes. Such measures are usually based on the arm's length principle stating that transactions between related parties need to be comparable with transactions between third parties. The OECD has undertaken great effort in the concretion of the arm's length principle and has elaborated guidelines for the application of the principle which are followed by many OECD and non-OECD member countries. However, there are still great differences across countries with regard to how arm's length prices should be determined, how they should be documented or what penalties arise on noncompliance. Therefore the objective of this study is, in a first step, to examine transfer pricing regulations across 44 countries over a time period of nine years (2001-2009). This study is, to our knowledge, the first to provide a comprehensive analysis of the development of such regulations over time and a comparison of the regulations between countries and regions. In the course of the analysis, also the position of the OECD is outlined and put into relation with the results. As the regulations are very complex, the collection of information was challenging. Tax databases are usually only available for the current year and do not cover all aspects of the regulations. In order to get detailed information and avoid uncertainties, all necessary information was collected using several Transfer Pricing Guides⁴, but also a number of articles and other references were made use of.⁵

¹ While intercompany trade amounted to about 25% of world trade in the 1980s, in 2006, it was estimated to be as high as 60%, see Kobetsky, M., Asia-Pacific Tax Bulletin 2008, p. 366.

² See Kobetsky, M., Asia-Pacific Tax Bulletin 2008, p. 365.

³ See Eden, L., Taxing Multinationals, 1998, p. 20.

⁴ Deloitte & Touche, Strategy Matrix for Global Transfer Pricing 2002, 2003, 2004, 2006, 2007, 2008, 2009; Ernst & Young, Transfer Pricing Global Reference Guide 2001, 2005, 2006, 2008, 2010; KPMG, Global Transfer Pricing Review 2007, 2009, 2011; PricewaterhouseCoopers, International Transfer Pricing 2002, 2003, 2006, 2008, 2009, 2010, 2011.

⁵ See appendix for references.

In a second step, this study will define a new variable which captures the strictness of transfer pricing regulations. The new variable relies on the collected country information for each year between 2001 and 2009 and can be used for future research on transfer pricing and corporate behaviour.

The remainder of the study is organized as follows. Chapter 2 gives an overview of previous literature on this issue. Chapter 3 provides a short introduction to international tax planning opportunities with respect to transfer pricing and profit shifting. In addition, the actions undertaken by the OECD on this matter are described. Chapter 4 comprises the country comparison. Different aspects of transfer pricing regulations, i.e. their applicability, methods, required documentation, deadlines, statutes of limitation, penalties, and the possibility of advance pricing agreements, are examined and compared not only over time but also across countries. Chapter 5 conducts the categorization of transfer pricing regulations. Finally, Chapter 6 concludes.

2 Previous Literature

Several studies have, so far, tried to capture the impact of transfer pricing regulations on corporate decisions. *Borkowski (2010)*⁶ uses mostly survey data to examine whether the choice of a transfer pricing method and the transfer pricing risks taken by multinational corporations are influenced by demographic, behavioural, financial, or tax variables. In order to account for differences in transfer pricing legislation and tax authority attitudes, she uses a home country dummy. This variable can only be a very rough proxy for the considered aspects as it also captures a multitude of other factors connected to the home country (e.g. size, wealth, currency, development, or corruption). *Jost, Pfaffermayr, Stoeckl, and Winner (2011)*⁷ apply a dummy variable capturing transfer pricing risk in their study on profit shifting within European multinationals. They define low and high risk depending on the existence of statutory transfer pricing regulations and a penalty regime where high risk is only imposed in case both components exist. They argue that the existence of penalties is usually connected with statutory documentation requirements and that therefore the documentation aspect is captured in the penalties component. In addition, a variable which states the time passed since the introduction of transfer pricing regulations is used in order to account for companies' and tax administrations' experience with the matter. The survey conducted in this study shows, however, that the existence of statutory rules alone is not a valid measure of transfer pricing risk. Some countries base their regulations on sophisticated guidelines which are not implemented in the tax law and others do not enforce statutory rules although they have existed for a long time. It is, therefore, necessary to include an enforcement component in addition, which is not only based on time of existence.

⁶ See Borkowski, S.C., *Journal of International Accounting, Auditing and Taxation* 2010, p. 35-54.

⁷ See Jost, S.P./Pfaffermayr, M./Stoeckl, M./Winner, H., *Profit Shifting within Multinational Firms: The Role of Entity Characterization Profiles*, Working Paper, February 2011.

Finally, *Beuselinck, Deloof, and Vanstraelen (2009)*⁸ examine income shifting in the European Union accounting for tax enforcement by defining a variable which comprises different features of transfer pricing regulations. Besides the availability of advance pricing agreements and audit risk, the strictness of documentation requirements is included. Each feature is expressed as a score between 0 and 1, the sum of which is the value of the tax enforcement variable. Although this variable comprises important aspects of the strictness of transfer pricing regulations, it has to be interpreted with caution since the weights used for audit risk and documentation requirements are difficult to comprehend and their coverage is only limited over time.⁹

This study adds to existing literature by defining a new variable which measures the strictness of transfer pricing regulations. The variable is based on a very comprehensive data collection and thereby extends the data background of other measures considerably. The variable consists of six categories which are, in contrast to some existing measures, precisely defined and easily comprehensible. The categories not only take into account the existence of transfer pricing regulations, but also the enforcement. It can, therefore, be a very useful and valuable component of future transfer pricing research.

3 The Importance of Transfer Pricing Regulations

3.1 International Tax Planning Opportunities

As a consequence of globalization, more and more businesses form multinational groups which locate activities across countries. This structure challenges the tax systems incorporated worldwide as intercompany transactions may involve many different jurisdictions. While there are risks associated with the taxation of group income, e.g. the double taxation of income, a group structure also offers opportunities for tax planning.

Tax planning, in this context, is a legal and accepted way of minimizing taxes and has to be distinguished from tax evasion which is illegal.¹⁰ The minimization of taxes can generally be achieved by realizing temporary or permanent tax savings.¹¹ While temporary tax savings only defer tax payments to a later point in time, e.g. by retaining instead of distributing profits, permanent tax savings on the other hand will not reverse. They are for example achieved by utilizing tax losses that would expire after a certain number of years or by transferring taxable income to low-tax jurisdictions.

⁸ See Beuselinck, C./Deloof, M./Vanstraelen, A., *Multinational Income Shifting, Tax Enforcement and Firm Value*, Working Paper, October 2009.

⁹ In both of the last two outlined studies, the bi-annual Ernst & Young transfer pricing guide (n. 4) was used for data collection.

¹⁰ For a distinction between tax planning, tax avoidance, and tax evasion see Russo, R., *International Tax Planning*, 2007, p. 49-57.

¹¹ See Russo, R., *International Tax Planning*, 2007, p. 65-68.

For a long-term increase of profitability such permanent tax savings are crucial and multinational companies try to exploit their potential by identifying portable profits.¹² There are mainly two alternatives. One is a restructuring of the business which includes the transfer of people, assets or of an entire plant to a low tax jurisdiction. This strategy could be observed in the past where a lot of multinationals have moved production to low-cost countries that also grant tax incentives, e.g. China or India.¹³ Rather than the shifting of capital, a second and less complicated alternative includes the shifting of income to a jurisdiction where more favourable tax attributes can be used, e.g. a lower income tax rate, tax incentives, or existing tax losses.¹⁴

Income can be shifted in several different ways, e.g. by intercompany financing, by a centralization of functions, or by adjusting prices of intercompany trade or services.¹⁵ All these actions take advantage of the fact that tax systems treat corporations as separate entities¹⁶ and allow for a deduction of expenses in one jurisdiction and accordingly a receipt of payments in another jurisdiction. But they also encourage arrangements purely based on the intention to save taxes.¹⁷ Therefore they may go beyond acceptable tax planning and impose a threat to jurisdictions' tax revenues. Due to the increasing number of multinational companies, which are furthermore under the strain of increasing profitability, and intercompany transactions, governments have become more aware of this risk in past decades. Besides transfer pricing regulations, which are in the focus of this study, several other anti-avoidance measures to prevent multinationals from shifting profits out of the country (e.g. thin capitalization rules) have been introduced.

3.2 OECD

As an extension to Article 9 of the OECD Model, which comprises the arm's length principle, a first report purely on transfer pricing matters¹⁸ was published in 1979, which served as a basis for the Transfer Pricing Guidelines issued in 1995.¹⁹

The guidelines deal with numerous aspects of transfer pricing. They offer detailed guidance for both, multinational companies and tax administrations, on the application of the arm's length principle, including several methods for the determination of arm's length prices and their appropriateness with regards to the comparability of transactions. In addition they provide assistance on administrative issues as well as recommendations on the documentation of transfer pricing. In 1996, two chapters

¹² See Russo, R., *International Tax Planning*, 2007, p. 76.

¹³ See Endres, D./Fuest, C./Spengel, C., *Company Taxation in the Asia-Pacific Region, India, and Russia*, 2010, p. 33-54; Timberlake, J./Schneider, P./Dong Terry, S., *Deloitte Review* 2009, p. 105-119.

¹⁴ See Kobetsky, M., *Asia-Pacific Tax Bulletin* 2008, p. 365.

¹⁵ See Russo, R., *International Tax Planning*, 2007, p. 76-78.

¹⁶ Note that the OECD also recommends a separate entity approach for permanent establishments, OECD, 2010 *Report on the Attribution of Profits to Permanent Establishments*, 22 July 2010.

¹⁷ See Eden, L., *Taxing Multinationals*, 1998, p. 19-26; Kobetsky, M., *Asia-Pacific Tax Bulletin* 2008, p. 364-366.

¹⁸ See OECD, *Transfer Pricing and Multinational Enterprises*, 1979.

¹⁹ See OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* 1995/96/97.

dealing with special problems regarding intangibles and intra-group services were added. A chapter on cost contribution arrangements was included in 1997. The last chapter so far was introduced in 2010 and comprises aspects of business restructurings. At the same time the chapters on the arm's length principle and the applicable methods were modified. The specific content of the guidelines will be outlined in the following.

4 Transfer Pricing Regulations

4.1 Existence and Applicability

Almost all tax codes worldwide contain anti-avoidance regulations with respect to the conditions of intercompany transactions. Such anti-avoidance regulations are mainly based on the arm's length principle which the OECD member countries have agreed upon as an international standard for transfer pricing. It supports an equal treatment of independent companies and those part of a multinational enterprise which avoids the possibility of tax loopholes and the creation of market distortions. A downside of the principle is that it may not always take economies of scale or other privileges into account that prevail for associated companies.²⁰

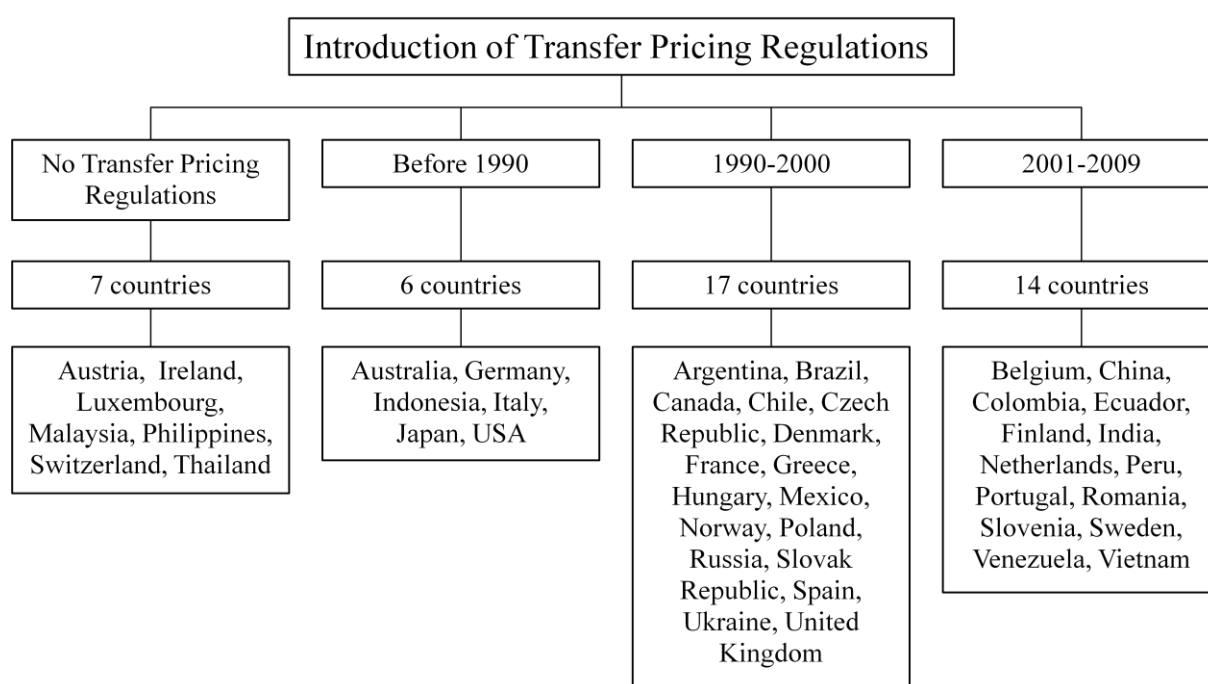
In addition to a general anti-avoidance regulation, many countries have also introduced specific transfer pricing regulations. However, the survey showed that the definition of transfer pricing regulations and especially their distinction to general anti-avoidance rules is not always clear. For this survey, it is assumed that transfer pricing regulations exist where, in addition to the arm's length principle, key elements, such as the terms related party or controlled transaction, methods or documentation requirements, are additionally included in the national tax law. Where only guidelines published by the tax authorities supplement the anti-avoidance rule in the tax law, it is still defined as a general anti-avoidance rule. However, this distinction does not always indicate that a general anti-avoidance rule is generally more generous than transfer pricing regulations. This has much rather to been seen in context with the other aspects of the regulations outlined in the following sections. In some cases, guidelines in conjunction with a general anti-avoidance rule are very sophisticated and often enforced (e.g. Australia or China before 2008), while transfer pricing regulations included in the national tax law are only rarely applied (e.g. Russia).

Table A1 in the appendix shows that the arm's length principle is included in the national tax law of almost all considered countries in this survey which proves that it is the internationally accepted standard for transfer pricing. The only exception is Brazil where maximum price ceilings and minimum income floors are defined. Specific transfer pricing regulations were mainly introduced in the last two decades (see Figure 1). The United States was the first country to focus on intercompany

²⁰ See Kobetsky, M., Asia-Pacific Tax Bulletin 2008, p. 367-368; Francescucci, D.L.P., International Transfer Pricing Journal 2004, p. 68-72; OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 1.8-1.10.

transactions and extended the transfer pricing regulations as early as 1968. Until now it is seen as one of the toughest and most detailed transfer pricing systems in the world.²¹ Five countries, mainly large, developed economies followed in the 1980s (Australia, Germany, Indonesia, Italy, Japan). 17 countries introduced transfer pricing regulations between 1990 and 1999 and 14 in the surveyed time period (2001-2009). This development can be attributed to globalization and the increasing awareness of this matter, but also to the fact that the introduction of transfer pricing regulations can function as a defence against other countries. As taxpayers tend to allocate more taxable income to countries where regulations are extremely aggressive in order to ensure compliance, the introduction of transfer pricing regulations can be a way to protect tax revenues.²²

Figure 1: Introduction of Transfer Pricing Regulations



There are seven countries in the sample that still do not have transfer pricing regulations introduced to their tax law. Those countries are Austria, Ireland, Luxembourg, Malaysia, the Philippines, Switzerland, and Thailand. In the case of Austria, it is rather unexpected that no detailed regulations exist, but tax authorities are aware of this issue and apply the OECD guidelines consequently. Ireland, Luxembourg, and Switzerland, on the other hand, are all European developed countries that attract a large amount of international investments due to their generous tax regulations.²³ It may, therefore, be the case that those countries benefit from non-arm's length transactions which may explain the missing regulations. At last, while Malaysia and Thailand both introduced detailed guidelines with

²¹ See PricewaterhouseCoopers, International Transfer Pricing 2011, United States, p. 777.

²² See Calderón, J.M., Intertax 2005, p. 109; Kobetsky, M., Asia-Pacific Tax Bulletin 2008, p. 363.

²³ See Grimes, L./Maguire, T., European Taxation 2005, p. 148-154; Bogaerts, R., European Taxation 2002, p. 380-388; both, Luxembourg and Switzerland, were the only two OECD member countries that abstained in the approval of the OECD Report on Harmful Tax Competition, 1998, which is also prove for the generous tax regulations in those countries.

respect to the general anti-avoidance rule and already pay attention to transfer pricing issues, the Philippines are now starting to focus on the matter.²⁴

As follows from the arm's length principle, transactions under consideration are those between related parties. Such related parties may either be located in the same country or abroad. In addition, some countries treat unrelated parties in tax havens as related parties. The majority of countries apply transfer pricing regulations to domestic and foreign related parties. Profit shifting usually only leads to a tax revenue loss if shifted cross-border, but as many countries offer very advantageous tax incentives for certain types of investment or for investments in certain regions, e.g. lower tax rates or tax holidays, a more favourable tax position can also be created through profit shifting between domestic related parties. The survey shows that most of the countries applying their rules to domestic and foreign related parties have a tax incentive system in place.²⁵ In turn, the countries restricting transfer pricing regulations only to foreign related entities are mainly developed, high-tax countries (e.g. Canada, Germany, Japan, or the USA).

The survey also shows that seven countries apply their transfer pricing regulations also to unrelated parties in tax havens, the countries are: Argentina, Brazil, Chile, Colombia, Ecuador, Peru, and Venezuela. All countries are located in South America which may be explained by their geographical proximity to the most relevant tax havens in the world.²⁶

A definition of associated enterprises is also included in Article 9 of the OECD Model. It states that two parties are related if one party "participates directly or indirectly in the management, control, or capital of the other or if the same persons participate directly or indirectly in the management, control, or capital of both parties". Such a participation is stated as "de facto control" and "under common control" in Table A1. The OECD does, neither in the Model Tax Convention nor in the Transfer Pricing Guidelines, define a certain minimum threshold which determines control. This approach is followed by 13 of the 44 considered countries (amongst others: Australia, Chile, France, Malaysia, Mexico, and the United States). All other countries define a fixed percentage of capital shareholding which identifies related parties. Poland introduced the lowest threshold of at least 5% for the definition of a related party. The largest group of countries uses a 25% capital contribution (including China and Germany) for their related party definition. A 50% shareholding is used by seven countries (e.g. Argentina or Japan). It is questionable whether the threshold gives an indication of how strict tax authorities are with regards to the identification of controlled transactions. At least for the countries without a fixed threshold, a conclusion on their stringency cannot be drawn.

²⁴ See PricewaterhouseCoopers, *International Transfer Pricing 2011*, Philippines, p. 639.

²⁵ For an overview of tax incentives in the Asia-Pacific region, see Endres, D./Fuest, C./Spengel, C., *Company Taxation in the Asia-Pacific Region, India, and Russia*, 2010, p. 33-54. See also UNCTAD, *Tax Incentives and Foreign Direct Investment – A Global Survey*, 2000, p. 69, 119, 145.

²⁶ See Owens, J./Sanelli, A., *Fiscal Havens in Latin America and the Caribbean*, 2007, Part 5, p. 2.

4.2 Methods

Based on the arm's length principle, several methods have been established in order to determine the appropriate transfer price for a certain transaction. In its 1979 report, the OECD has introduced three traditional transaction methods (the comparable uncontrolled price (CUP) method, the resale price method (RPM), and the cost plus method) with a clear preference for the CUP method. After the United States had announced additional methods based on profit comparisons in the early 1990s, the OECD also extended its recommendations. In the Transfer Pricing Guidelines published in 1995, besides the traditional transactions methods, two transactional profit methods (transactional net margin method (TNMM) and profit split method) were included, which define prices based on different profit allocations. While the OECD expressed a clear preference for the traditional transaction methods, especially the CUP method²⁷, the United States introduced a best method rule.²⁸ Only in 2010, the OECD has published an amended version of the Transfer Pricing Guidelines showing a greater openness towards the transactional profits methods.²⁹

Comparable Uncontrolled Price (CUP) Method

Under the CUP method, the price of an uncontrolled transaction is compared with the price of a controlled transaction. An uncontrolled transaction implies that the parties involved are not affiliated and are themselves not part of a group.

The major requirement of the CUP method is the comparability of transactions. The OECD outlines several characteristics which have to be comparable, i.e. among others, product type, quality, availability, assets used and risks assumed, contractual terms, and economic circumstances (e.g. level of market, geography, and timing). If such a comparable transaction can be identified or if differences can be accounted for by reasonably adjusting the price, tax administrations usually prefer the CUP method.

However, in some cases, the CUP method may not be applicable, e.g. if the market is not competitive or if assets are so unique that a comparable transaction cannot be identified. This holds especially true for transactions involving intangible assets as they usually base on substantial negotiations and contract terms and bargaining power can in most cases not be observed.³⁰

²⁷ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 2.5.

²⁸ For further explanation see below.

²⁹ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 2.3.

³⁰ See King, E., Transfer Pricing and Corporate Taxation, 2009, p. 24-25.

Resale Price Method (RPM)

Under the resale price method, in order to find an arm's length price, the resale price obtained by a distributor is reduced by an appropriate gross margin. The appropriate gross margin can be found with reference to transactions with unaffiliated companies (internal comparable). In case, such a comparison is not possible, the gross margins of other individual distributors of similar products may be used (external comparable).

The method is based on the assumption that gross margins are comparable for all products. This implies that products and circumstances of the transaction must be similar - under US regulations even higher standards of comparability are required than for the CUP method. However, it is questionable whether this assumption is true even if comparability prevails because it also suggests that gross margins are equal over firms, which does not seem a realistic assumption.³¹ For those reasons, the OECD guidelines state that adjustments are needed under several circumstances which increase the documentation effort and complexity of the RPM method.

Cost Plus Method

The cost plus method is very similar to the resale price method, but takes the perspective of a manufacturer selling similar products to affiliated and unaffiliated companies. It adds an appropriate cost plus mark up to the costs of goods sold to find an arm's length price.

The same critique as to the resale price method can generally be applied to the cost plus method. Especially whether cost plus mark ups are similar over different products and different firms and whether costs are even an appropriate starting point.³²

Profit Split Method

Under the profit split method total profits accruing from controlled transactions are identified and split between all associated companies using ratios that would have been utilized in an uncontrolled transaction. The method can be applied using ex ante or ex post profits, i.e. projected or actual profits. The split of profits should take into account the circumstances of the transaction and consider assets used and risks assumed by the associated companies. This can be done by using comparables or by applying a residual approach. The residual profit split method, in a first step, allocates profits to the associated companies using one of the other methods (traditional transaction method or TNMM/CPM), not accounting for individual contributions. In a second step, the residual profit is split according to the relative value of each partner's contribution. The comparable profit split method, on the other hand, uses comparable transactions between independent parties for the allocation of profits.

³¹ See King, E., *Transfer Pricing and Corporate Taxation*, 2009, p. 19-21.

³² See OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations*, 22 July 2010, Para. 2.43.

This is done by defining key allocators which are based on assets/capital, costs, headcounts, or time spent.³³

The profit split method allows an analysis of transfer prices for more complex business structures, e.g. highly integrated processes. Due to the two-sided approach, cases where both parties of a transaction contribute unique and valuable components can be accounted for. However, the measuring of total profits may be a difficult task, especially if considering foreign affiliates.³⁴ As the residual profit split method makes use of a second method, the shortcomings of that method have to be considered as well. Furthermore, it is questionable, whether the profit allocation of independent companies with reference to key allocators provides appropriate ratios.

Transactional Net Margin Method (TNMM) and Comparable Profits Method (CPM)

The TNMM, as outlined in the OECD guidelines, and the CPM, which is part of US transfer pricing regulations³⁵, are both based on the comparison of the taxpayer with a group of similar, standalone companies. The companies in the sample have to operate in the same field, perform similar functions, and distribute comparable products. For each company, a profit level indicator (PLI), e.g. operating profits to sales or gross profits to operating expenses, is calculated, which is then applied to the respective denominator of the taxpayer's accounting results. While the CPM applies a "top-down"-approach, which means that the entire operations of the company are broken down to transactions, the TNMM uses a "bottom-up"-approach and starts on the transactional level. If the profit level indicator of a controlled transaction lies within a range of indicators of uncontrolled transactions, the transfer price is assumed to be appropriate.

The advantages of both methods are that information is more easily available and that the documentation effort is reduced compared to other methods. However, operating profits can be affected by several factors which are hard to identify and to quantify.³⁶ Therefore it is often argued that transfer prices found are not at arm's length.³⁷

Selection of Method

The OECD generally prefers the traditional transaction methods as they are a more direct way of identifying a transfer price. However, ultimately the facts and circumstances of the transaction are crucial. In cases where no or not sufficient information on third parties is available or where business processes are very complex and a two-sided approach is needed, the transactional profit methods can

³³ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 2.135.

³⁴ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 2.114.

³⁵ See US-Regulations § 1.482-5.

³⁶ See Vögele, A./Borstell, T./Engler, G., Verrechnungspreise, 2011, p. 321.

³⁷ For a more detailed discussion of the Transactional Net Margin Method and Comparable Profit Method see Casley, A./Kritikides, A., International Transfer Pricing Journal 2003, p. 162-168.

be more appropriate. Other countries, including the United States, do not define a priority of methods, but take several factors into account in order to identify the most appropriate method (also called best method). The process of identifying the most appropriate method differs between countries, but it often includes the testing of each single method.

Table A2 provides an overview of the applicable transfer pricing methods and their priority in the considered countries. Regarding the different transfer pricing methods, there is only little variation across countries. With the exception of Brazil, the OECD transfer pricing methods are widely accepted. Since Brazil did not base transfer pricing regulations on the arm's length principle, the available methods differ and include fixed margins applied on resale price or costs. In an international context, this causes large problems as the methods will vary in both countries involved in the transaction which may in turn lead to double taxation.³⁸ Another exceptional method which uses the market value established in transparent markets of certain goods on the day of their shipment was introduced by Argentina in 2005. The method is mandatory if certain conditions are fulfilled.³⁹

Only few countries (e.g. Chile, Greece, or Russia) have limited their acceptable methods to the traditional transaction methods (CUP, RPM, and Cost Plus). In Russia, the limited number of methods comes along with a strict hierarchy of methods which makes the regulation very difficult and inefficient in practice.⁴⁰ In Greece, the acceptable methods were even more limited until 2009. Only the CUP method could be used to determine arm's length prices causing great difficulties in identifying comparable transactions as the required data was not always available.⁴¹

Also with respect to the priority of methods, the great majority of countries follows the approach by the OECD and prefers the traditional transactions methods over the transactional profit methods. Some countries apply, in addition, a strict preference for the CUP method (e.g. Australia, Italy, or Mexico). Nine countries use a best method rule for the selection of the applicable method (e.g. Argentina, Peru, China, India, or the USA).

Out of the OECD member countries, only Greece and Ireland do not follow the OECD guidelines. In Ireland only a very general anti-avoidance rule is in place which does not require the definition of methods.

4.3 Documentation Requirements

In order to monitor the transfer pricing policy of multinational companies, tax authorities in most countries require detailed documentation. The preparation of sufficient documentation is especially

³⁸ See Falcao, T., Intertax 2010, p. 505.

³⁹ See PricewaterhouseCoopers, , International Transfer Pricing 2011, Argentina, p. 202-203.

⁴⁰ See Variychuk, E., Bulletin for International Taxation 2011, p. 108.

⁴¹ See Malliou, A./Savvaidou, K., IFA Cahiers 2007, Transfer Pricing and Intangibles, Greece, p. 298.

important as in most countries the burden of proof will then rest on the tax authorities. It may, however, switch to the taxpayer if documentation is incomplete or inaccurate.

The OECD has included a chapter on recommended documentation in its Transfer Pricing Guidelines which is supposed to help tax authorities when formulating documentation inquiries as well as taxpayers when preparing documentation on intercompany transactions. It states that “information about the associated enterprises involved in the controlled transactions, the transactions at issue, the functions performed, [and] information derived from independent enterprises engaged in similar transactions or businesses” is required to analyse transfer pricing policies.⁴² The guidelines also include other factors that should be documented in certain transactions or under certain circumstances such as a business outline, an organizational structure, or an economic analysis.⁴³ It has, however, to be noted that all explanations are only recommendations and do not go into much detail concerning their implementation.

Besides the documentation that should be maintained by the taxpayer, some countries even require information to be disclosed with the annual tax return. In this regard, the OECD recommends that the requested information should be limited to an extent that allows the tax authorities to identify taxpayers that require additional examination.

As detailed country-specific information is not available and only hard to assess, the exact content of the requested documentation in each country is difficult to capture. Lists of required documents may exist, but it is not always clear whether such lists are enforced in practice. Therefore the overview in Table A3 is limited to the existence of documentation requirements and whether taxpayers are obliged to disclose any information with the tax authorities. In the case that documentation requirements are not implemented in the national tax law (no statutory requirement), documentation may still be required in practice, based on tax administration’s guidelines or the fact that companies are expected to provide documentation in an audit. For simplification, the content of the required disclosure is stated as short or long in Table A3. A short content is assumed to exist if only a summary or overview of transactions is necessary for disclosure, while a long content is assumed if (almost) full documentation (also called a transfer pricing study) is required.

⁴² See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 5.17.

⁴³ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 5.18.

Figure 2: Introduction of Statutory Documentation Requirements

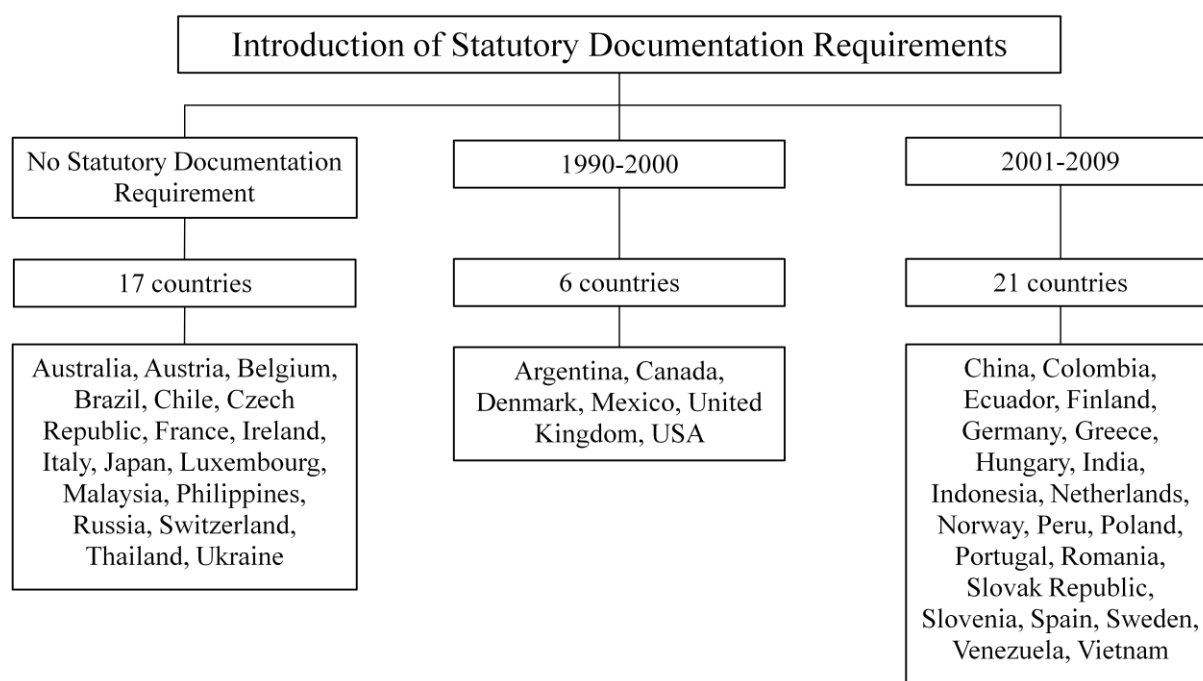


Figure 2 shows that documentation has become an important issue in the past ten years. 21 out of the 27 countries applying a statutory documentation requirement have introduced it in the last decade. Only six countries already had documentation requirements in place before 2001. The introduction of a statutory documentation requirement was in most cases linked to the introduction of transfer pricing regulations in general. Especially the Southern American and Asian countries have introduced comprehensive rules in the considered time period. The only country that introduced transfer pricing regulations without a documentation requirement is Belgium. Interestingly, a lot of European countries have had transfer pricing regulations in place for a considerable time period before they extended their scope and included a documentation requirement. This shows the increasing awareness of transfer pricing and the need for proper documentation.

Only three out of the 17 countries that still do not have a statutory requirement, do not require documentation to exist in practice (Chile, Ireland, and Ukraine). The remaining 14 countries require documentation to exist in practice, especially in the course of an audit. The fact that a documentation requirement is included in the national tax law does, however, not necessarily mean that documentation is strictly enforced. Therefore another aspect, the required disclosure of documents, should be taken into account.

By the year 2009, 24 countries require a disclosure of documents on transfer pricing, eleven of which have introduced the disclosure during the considered time period. Remarkably, out of the 20 countries, that still do not require any disclosure in the annual tax return, 17 are European countries (the other three countries are Chile, the Philippines, and Thailand). This shows that while many European

countries have introduced a statutory documentation requirement, they have not taken the second step and added a mandatory disclosure to their regulations. The survey also shows that the need to submit documents to the tax authorities is not always connected with a statutory documentation requirement in the tax law. Six countries have required or still require a disclosure of information although no statutory requirement exists (i.e. Australia, Brazil, China, Indonesia, Italy, and Malaysia). In most cases, the disclosure is then based on detailed guidelines by the tax authorities.

A distinction can also be made with respect to the content of the disclosure. While some countries only require a short summary or overview over controlled transactions, other countries require a transfer pricing study. Out of the 24 countries where submitting documentation is required, 16 require a short and eight a long content. Interestingly, the countries requesting an extensive disclosure are, with the exception of Mexico, no OECD member states. The content of disclosure has generally been extended over the last decade, i.e. Argentina, China, Indonesia, and Peru have switched from a short to a long content.

From the survey, it becomes evident that a great variety of documentation requirements exists. The compliance with those detailed requirements demands a high allocation of resources and effort from multinational companies. Therefore, there have been approaches to reduce the complexity of documentation. Firstly, the European Union has set up a Joint Transfer Pricing Forum in early 2002 which consists of 25 Member States representatives and 10 business representatives. It has worked out a report regarding standardized documentation requirements of transfer price determination for all Member States. The report functions as a guideline, but it is not legally binding. A study conducted by CFE shows that so far about 44% of EU member states have implemented the Code of Conduct in their tax legislation.⁴⁴ Secondly, the PATA, an inter-governmental organization that comprises Australia, Canada, Japan, and the United States, published a documentation package in 2003 that allows taxpayers to file only one set of documentation which is accepted in all member countries and will not lead to penalties.⁴⁵

4.4 Submission Deadlines

Another aspect of transfer pricing regulations are submission deadlines for full documentation or for transfer pricing disclosure. Full documentation is in most countries only submitted upon request, but the time period available may vary. For the disclosure, it is usually the deadline of the annual tax return, but may in some cases also be a separate date. Table A4 therefore gives an overview of applicable deadlines for full documentation and disclosure. It shows that great differences exist in the amount of days that taxpayers are granted to submit the required documentation. The countries

⁴⁴ See Valente, P./Raventos-Calvo, S., 2010 CFE Questionnaire on Transfer Pricing Documentation, 2010, p. 30-32.

⁴⁵ See Anderson, P., Asia-Pacific Tax Bulletin 2003, p. 199-203; Markham, M., Revenue Law Journal 2004, p. 151-177.

requiring an extensive disclosure generally grant a longer period of time for the submission of the tax return, i.e. between four months from tax year end in Indonesia and twelve months from tax return submission in Ecuador, resulting in an average of 7.6 months. In contrast, the countries requiring a short disclosure only allow for a shorter period of time, i.e. between two months from tax year end in Japan and seven months from tax year end in Malaysia and Italy, the average being 4.7 months, which shows that the disclosure dates of the transfer pricing return generally reflect the required content.

The deadlines for the full documentation can be compared for the countries not requiring a disclosure and those requiring a short disclosure. Overall, the deadlines are between three days in Hungary and three months in Canada, the Netherlands, and Slovenia. Where a short disclosure is required, the deadlines for the full documentation are slightly longer (average 43.1 days) than in the countries without any disclosure (average 35.9 days). A possible explanation could be the fact that the tax authorities in the latter case do not have any information on the transfer pricing policy, therefore they require the necessary information in a shorter period of time. A geographical or OECD membership correlation does not exist with regards to the deadlines, instead the strictest and the most generous countries are both members of the OECD.

4.5 Penalties

In order to enforce the correct handling of tax regulations, many countries impose penalties. Besides penalties on the wrong determination of taxable income, regulations may also include penalties on wrong or incomplete documentation. The OECD acknowledges the use of penalties in order to ensure compliance, but emphasizes the need for a fair and not too burdensome regime. It is argued that a penalty regime that is too hard on the taxpayers may distort the determination of taxable income between two jurisdictions.⁴⁶ Therefore, the OECD member states have agreed to not impose substantial penalties on taxpayers who have acted in good faith.⁴⁷ Most countries apply general tax penalties to transfer pricing cases, but some countries have introduced special transfer pricing penalties, especially with respect to documentation.

As can be seen in Table A5, information on transfer pricing penalties is exceptionally difficult to gather as several available sources state conflicting information. Therefore, the table does not provide a comprehensive list, but rather indicates the penalties that could be identified for a given country in a given year. There may be additional penalties not listed in the table and penalties may be applicable for a longer period of time.

The first aspect considered in this overview is whether special transfer pricing penalties exist or if the general tax penalties are applicable for transfer pricing matters. It can be found that the great majority

⁴⁶ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 4.25-26.

⁴⁷ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 4.28.

of countries (32 out of 44 countries) does not impose special transfer pricing penalties. Out of the remaining twelve countries, eight countries have introduced the special transfer pricing penalties in the considered time period. The introduction of transfer pricing penalties is in most cases connected with the introduction of statutory documentation requirements (e.g. in China, Ecuador, Germany, India, Romania, and in Spain). It is therefore not surprising that the special penalties typically refer to the transfer pricing documentation requirements, while penalties on transfer pricing adjustments are usually the same as for other taxable income adjustments.

Penalties on Transfer Pricing Adjustments

The penalties on adjustments of transfer prices follow a similar pattern but lie in a broad range regarding their severity. In most cases, the penalties on a transfer pricing adjustment are expressed as a percentage of unpaid tax or of the transfer pricing adjustment itself. About half of the countries apply a percentage of less than 100% of additional tax with Austria (2%), Denmark (surcharge of about 6%), and Vietnam (10%) being the countries with the lowest rates. The other half imposes penalties of at least 100%, Argentina of even 400%. Five countries (Canada, Finland, Greece, Poland, and Spain) use the transfer pricing adjustment as the base of the penalty, thereby applying a special tax rate on the additional income. The rates range from 10% in Canada and Greece to 50% in Poland. In many countries, a higher percentage applies to cases where transfer prices were fraudulently manipulated. Some countries even limit the imposition of penalties to cases of fraud (e.g. Russia or Switzerland). The applicable percentages are at least doubled, ranging between 20% in Russia and 1,000% in Argentina. However, it has to be mentioned that many countries allow for a reduction in penalties on the adjustment if sufficient documentation exists. The reduction usually depends on the quality of the documentation and is therefore difficult to quantify (for that reason, it is not included in Table A5). Overall, no trend as to the application of stricter or milder penalties over time can be observed, while some countries increase the percentages (Argentina), others decrease them (Malaysia, Mexico, and Vietnam).

Another aspect of penalties on transfer pricing adjustments is interest on the late payment of taxes. It is imposed in almost all countries. While some countries only apply a federal or market rate in order to account for the time value of the payments, others impose interest rates that include a penalty component. In particular this means that interest rates may be as high as 3% per month or 0.1% per day which amount to approximately 36% per year (Argentina and Vietnam).

Penalties on Documentation

Penalties on documentation also vary significantly. For 14 out of the 44 considered countries, it is known that no documentation penalties exist (e.g. Australia, Japan, and the United States). But many countries impose penalties on wrong, late or missing documentation. The penalties either amount to a fixed monetary amount, to a percentage of unpaid tax or to another specific factor as defined in the

national tax code. 16 countries impose a fixed fine which lies between RON14,000 (~USD3,900) in Romania and ARS450,000 (~USD150,000) in Argentina. The Latin American countries tend to express monetary fines in tax units (e.g. Peru, up to 30TU with 1TU=~USD1,000). The value of a tax unit is defined in the tax law and is adjusted according to inflation.

Eight countries (e.g. Belgium, Brazil, and the United Kingdom) impose a penalty on the transfer pricing adjustment only if no documentation exists. The percentage ranges between 45% in Malaysia and 225% in Brazil. The distinction between documentation and adjustment penalties is rather difficult in this case, but generally, adjustment penalties are also applicable if full documentation exists. There may be a reduction regarding the quality of the provided information, but it is not only imposed if no documentation exists.

Some countries define other specific measurements for documentation penalties, for example, a percentage of the transaction value for which the information is wrong or missing (e.g. Brazil and Colombia). A very interesting approach is chosen by Denmark where the penalty amounts to 200% of costs saved by not preparing documentation. It is questionable how saved costs should be calculated and so far - although introduced in 2006 - no guidance exists on that behalf.

4.6 Statute of Limitations

The statute of limitations defines the time period during which tax authorities can undertake reassessments of the tax liability. It is therefore also part of transfer pricing regulations as it prescribes how long documentation has to be kept or how long changes can be made to transfer prices applied in intercompany transactions. Table A6 provides an overview of national regulations on statutes of limitations. It shows that most countries (28 out of 44 countries) use the tax year end or the end of the year in which the tax return has been filed to determine the beginning of the statute of limitations. The remaining countries apply the date of the filing of the return.

In order to compare the duration of the statute of limitations, it is assumed that the end of the filing year is one year after the end of the tax year. The survey then shows that the great majority of countries applies a duration of up to five years (34 countries), the shortest time period being two years (e.g. Colombia, India, France, or Russia). The longest statutes of limitations are prescribed by Australia (unlimited), the Czech Republic, Switzerland (both 15 years), and Austria (10 years). It has to be noted that the four countries that have amended their regulations on the statute of limitations have reduced the duration (Austria, Belgium, Czech Republic, and Indonesia).

13 countries apply a longer duration of the statute of limitations for cases of fraud. The interval is usually at least doubled, with four countries even applying an unlimited time period (i.e. Indonesia, Malaysia, Ukraine, and the US). The Netherlands are the only country which prescribes a specified statute of limitations for foreign income (i.e. 12 years, compared to 5 years for other income).

4.7 Advance Pricing Agreements

In the course of the application of transfer pricing regulations, disputes may arise between taxpayers and tax authorities. An adjustment of transfer prices by one jurisdiction can lead to double taxation as the other jurisdiction may not always agree with the adjustment. Thus, several approaches exist in order to prevent double taxation and minimise transfer pricing disputes which the OECD has outlined in its Transfer Pricing Guidelines.⁴⁸

The OECD Model contains two Articles which include approaches for dealing with tax disputes: the mutual agreement procedure and corresponding adjustments. The mutual agreement procedure (Article 25 OECD Model) can be used to eliminate double taxation. In Art. 25 para. 3 OECD Model, it is stated that “tax authorities should try to solve by a mutual agreement any difficulties or doubts which arise as to the interpretation or application of the Convention”. As provided for in Paragraph 10 of the Commentary on Article 25, this explicitly applies to transfer pricing adjustments following Art. 9 para. 1 OECD Model. The tax administrations are obliged to solve the case within two years, otherwise the taxpayer may choose to solve the case through an arbitration process.⁴⁹

Article 9 para. 2 OECD Model deals with requests for corresponding adjustments which may be subject of a mutual agreement procedure. It especially refers to adjustments between associated companies and demands tax authorities to coordinate adjustments so that no double taxation occurs.

The European Union has also made an attempt to simplify the solution of transfer pricing disputes. In 1990, the Member States signed a convention which deals with the elimination of double taxation due to income adjustments between associated entities.⁵⁰ This Arbitration Convention was amended in 2008 and now covers all 27 Member States. It applies to cases where transfer prices are not deliberately wrong, i.e. where no serious penalties arise. In addition, the convention sets a time limit for mutual agreements between two or more Member States on transfer pricing issues.

In an advance pricing arrangement (APA), a set of characteristics for controlled transactions is determined in advance and for a fixed period of time. Some countries offer unilateral APAs that are concluded between the taxpayer and the tax administration in the same jurisdiction and do not take other parties into account. But since unilateral APAs also affect the tax liability of the related party, there may still be a need for an agreement procedure. Therefore, bilateral or multilateral APAs are more favourable.⁵¹ In those cases, taxpayers of at least two jurisdictions negotiate with the responsible

⁴⁸ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Chapter IV.

⁴⁹ This possibility was only added to the Model Tax Convention in 2008 and is now starting to be included in newly ratified double tax treaties.

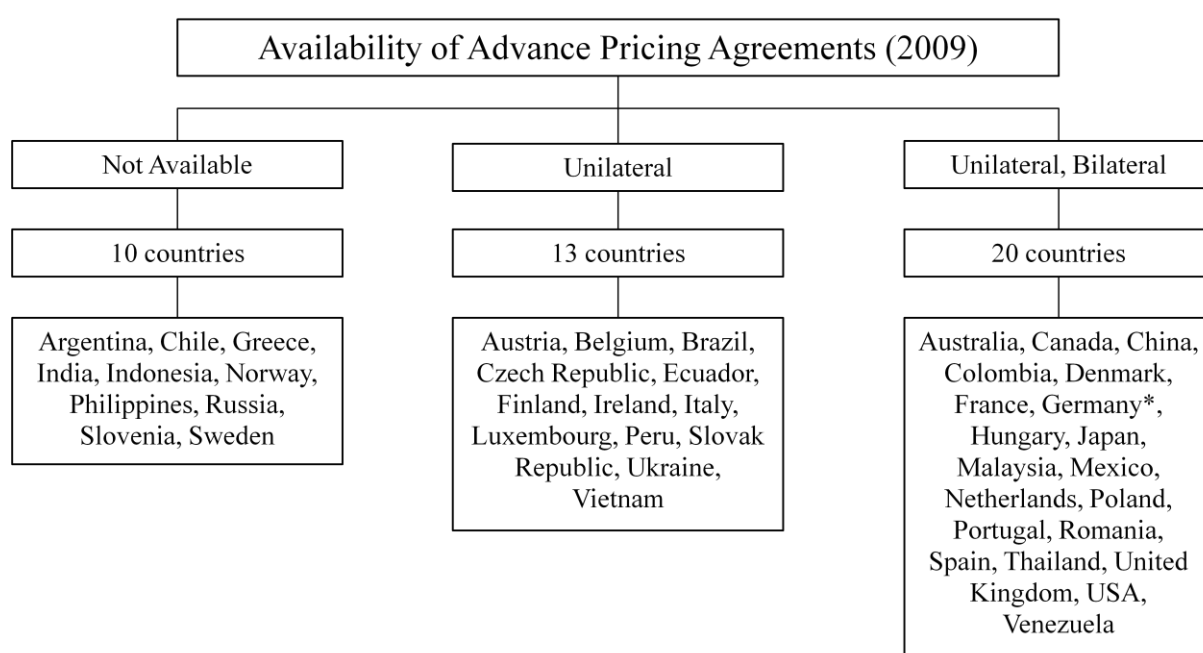
⁵⁰ Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises, 90/436/EEC, OJ, L 225, p. 10-24.

⁵¹ See OECD, Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations, 22 July 2010, Para. 4.147.

tax administrations and identify a transfer pricing strategy that is more equitable to all participants in the agreement. Such arrangements reduce the risk of double taxation and lead to a greater certainty in international trade, which is supported by the result of a survey conducted by Ernst & Young, where 90% of multinationals that have entered into advance pricing agreements indicated that they would use them again.⁵²

Some countries offer sophisticated procedures for the set-up of an APA, others do not allow for binding agreements between the tax administration and the taxpayer. In such cases, an APA can only be concluded between tax authorities through a mutual agreement procedure on a case-by-case basis.

Figure 3: Advance Pricing Agreements



* only bilateral; no information available for Switzerland

Figure 3 (based on Table A7) shows that APAs are common in the considered countries. Only ten countries do still not allow for such agreements. Unilateral agreements are generally easier to administer as they only consider one country and can be dealt with in an existing rulings process. Bilateral agreements, on the other hand, require an extensive procedure that has to be set up in most tax administrations. It is therefore not surprising that most countries start with the availability of unilateral agreements and later extend the procedure to bilateral agreements. By the end of the considered time period, more countries offer uni- and bilateral agreements than only unilateral agreements.

Where advance pricing agreements were newly introduced in the considered time period, three countries have introduced the possibility for unilateral agreements (i.e. Czech Republic, Ecuador, and

⁵² See Ernst & Young, 2010 Global Transfer Pricing Survey, p. 3.

Peru), while six countries have introduced an agreements procedure offering uni- and bilateral agreements (i.e. Hungary, Malaysia, Poland, Portugal, Romania, and Venezuela). For most of those countries, the introduction took place after transfer pricing regulations and documentation requirements were in place. An exception is Malaysia, where no transfer pricing rules exist and Venezuela where all aspects were introduced at once. Besides Malaysia, there are only few countries where the possibility for a bilateral agreement existed before transfer pricing rules were introduced (i.e. China, the Netherlands, and Thailand). Another seven countries have extended the scope of their agreements procedure to uni- and bilateral agreements. As an exception, Germany only allows for bilateral agreements.

Surprisingly there are still a number of countries that have comprehensive transfer pricing regulations in place, but do not offer the possibility to enter into an advance pricing agreement. Those countries are Argentina, Greece, India, Indonesia, Norway, the Slovak Republic, Slovenia, and Sweden.

Nevertheless, the overview shows that countries are increasingly offering advance pricing agreements. This may be an answer to the need of multinational companies to reduce their risk in transfer pricing matters as awareness is rising. But it can also be argued that the introduction of APAs functions as a tax incentive, giving the tax authorities a possibility to agree on rather flexible terms and thereby attracting investment.⁵³

5 Categorization of Transfer Pricing Regulations

The previous chapter provides a comprehensive overview of different aspects of transfer pricing regulations. As the scope of regulations was continuously extended, it becomes obvious that transfer pricing is increasingly important, to governments and to multinational corporations. A survey conducted by Ernst & Young in 2010, in which multinationals across 25 countries were interviewed on their perception on transfer pricing, underlines this result. About 75% of the respondents stated that transfer pricing will be “absolutely critical” or “very important” in the following two years.⁵⁴

We therefore compare countries and provide a measure for the strictness of national transfer pricing regulations. As outlined in Chapter 2, we thereby extend several existing studies that have so far tried to identify an appropriate measure and introduce a new measure based on the regulations described in the preceding chapter.

First, it is crucial to define strictness. On the one hand, the design and scope of implemented rules have to be taken into account. The applicability to a broader range of taxpayers, the requirement of an extensive documentation in a rather short period of time and high material penalties are elements of a strict regulation. But on the other hand, also the enforcement and awareness of such rules has to be

⁵³ See Calderón, J.M., *Intertax* 2005, p. 108; Kamphuis, E./Oosterhoff, D., *Tax Notes International* 2003, p. 339-340.

⁵⁴ See Ernst & Young, 2010 Global Transfer Pricing Survey, p. 3, 7.

considered. As one element of enforcement, we consider whether or not regulations are introduced in national tax law since statutory rules generally have a wider range and importance than guidelines published by the tax authorities. The survey shows that especially the introduction of documentation requirements into national tax law plays an important role for the awareness of the issue in a given jurisdiction. However, there may also be exceptions where the administrative procedures are very sophisticated and based purely on guidelines. To bring these aspects together, we define the need for disclosure as a valid measure for the enforcement of documentation requirements and, in turn, transfer pricing regulations because it stands for a requirement of documentation connected with a definite annual deadline for submission. It thereby encourages taxpayers to comply with transfer pricing regulations.

Based on this reasoning, we define six categories in order to evaluate the strictness of transfer pricing regulations in a given country. The categories are as follows:

Table 1: Categories of Transfer Pricing Regulations

Category	Description
Category 0	No general anti-avoidance rule/no transfer pricing regulations or documentation requirements exist
Category 1	Arm's length principle (through transfer pricing regulations or general anti-avoidance rule) introduced in national tax law, but no documentation requirement
Category 2	Arm's length principle (through transfer pricing regulations or general anti-avoidance rule) introduced in national tax law, documentation requirement is not introduced in national tax law, but required to exist in practice (audit)
Category 3	Arm's length principle (through transfer pricing regulations or general anti-avoidance rule) introduced in national tax law, documentation requirement is introduced in national tax law , but full documentation must only be available upon request
Category 4	Arm's length principle (through transfer pricing regulations or general anti-avoidance rule) introduced in national tax law, (documentation requirement is introduced in national tax law), a short disclosure of documentation is required
Category 5	Arm's length principle (through transfer pricing regulations or general anti-avoidance rule) introduced in national tax law, (documentation requirement is introduced in national tax law), a long disclosure of documentation is required

The categories defined in Table 1 account for the existence of transfer pricing regulations, the introduction of documentation requirements into the national tax law as well as the required disclosure. As mentioned in Chapter 4.3, the content of the required documentation is extremely difficult to identify, therefore it is not considered.

Other elements of transfer pricing regulations that could also be used for this measure are the definition of related parties, the deadlines for documentation, the statute of limitations, and penalties.

Clearly, the lower the applicable threshold, the shorter the deadlines, the longer the statute of limitations, and the higher the penalties, the stricter are the regulations. But as the weight of each single element is very difficult to assess, we believe that they should not be accounted for by additional categories. Much rather, they could be used as separate variables.

For the countries considered in this study, the distribution over the categories is given in the following table.

Table 2: Category allocation to the considered countries⁵⁵

Country	2001	2002	2003	2004	2005	2006	2007	2008	2009
NORTH AND SOUTH AMERICA									
Argentina	5	5	5	5	5	5	5	5	5
Brazil	5	5	5	5	5	5	5	5	5
Canada	4	4	4	4	4	4	4	4	4
Chile	1	1	1	1	1	1	1	1	1
Colombia	2	2	2	4	4	4	4	4	4
Ecuador	0	0	0	0	5	5	5	5	5
Mexico	5	5	5	5	5	5	5	5	5
Peru	n/a	n/a	n/a	n/a	4	5	5	5	5
United States	4	4	4	4	4	4	4	4	4
Venezuela	1	4	4	4	4	4	4	4	4
ASIA/AUSTRALIA									
Australia	4	4	4	4	4	4	4	4	4
China	4	4	4	4	4	4	4	5	5
India	5	5	5	5	5	5	5	5	5
Indonesia	1	4	4	4	4	4	4	4	5
Japan	4	4	4	4	4	4	4	4	4
Malaysia	4	4	4	4	4	4	4	4	4
Philippines	n/a	n/a	n/a	n/a	n/a	n/a	2	2	2
Thailand	2	2	2	2	2	2	2	2	2
Vietnam	2	2	2	2	2	4	4	4	4
EUROPE									
Austria	2	2	2	2	2	2	2	2	2
Belgium	2	2	2	2	2	2	2	2	2
Czech Republic	2	2	2	2	2	2	2	2	2
Denmark	4	4	4	4	4	4	4	4	4
Finland	n/a	n/a	2	2	2	2	3	3	4
France	2	2	2	2	2	2	2	2	2
Germany	2	2	3	3	3	3	3	3	3
Greece	1	1	1	1	1	1	1	3	3
Hungary	2	2	3	3	3	3	3	3	3
Ireland	1	1	1	1	1	1	1	1	1
Italy	4	4	4	4	4	4	4	4	4
Luxembourg	n/a	n/a	n/a	n/a	2	2	2	2	2
Netherlands	1	4	4	4	4	4	4	4	4

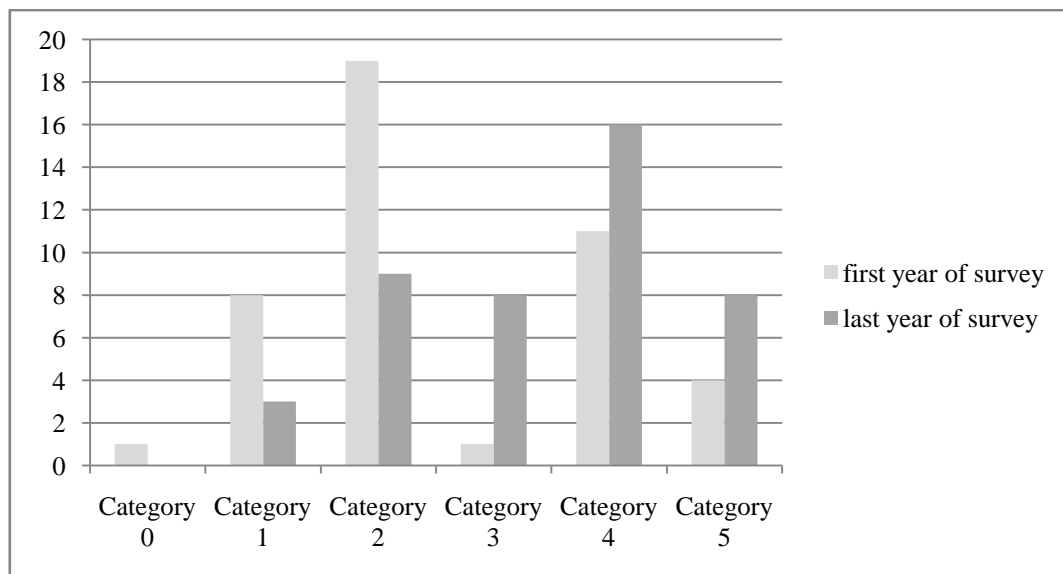
⁵⁵ There are few countries where a disclosure of documentation is necessary, but no statutory documentation requirement exists (e.g. Australia and Brazil). The documentation is then based on comprehensive guidelines. The disclosure is assumed to outweigh the missing statutory regulation and such countries are chosen to fall under Category 4 or 5.

Norway	n/a	n/a	n/a	2	2	2	2	4	4
Poland	4	4	4	4	4	4	4	4	4
Portugal	1	4	4	4	4	4	4	4	4
Romania	n/a	n/a	2	2	2	2	3	3	3
Russia	2	2	2	2	2	2	2	2	2
Slovak Republic	n/a	n/a	n/a	n/a	2	2	2	2	3
Slovenia	n/a	n/a	n/a	n/a	n/a	n/a	4	4	4
Spain	2	2	2	2	2	2	3	3	3
Sweden	2	2	2	2	2	2	3	3	3
Switzerland	2	2	2	2	2	2	2	2	2
Ukraine	1	1	1	1	1	1	1	1	1
United Kingdom	3	3	3	3	3	3	3	3	3

The categorization in Table 2 shows that 26 out of the 44 considered countries did not change the strictness of transfer pricing regulations. They are allocated to the same category over the considered time period. But the other 18 countries changed transfer pricing regulations and, in all cases, increased their strictness. Most countries increased the strictness with regard to 1 or 2 category steps, by introducing documentation or disclosure requirements. But few countries (Ecuador, Indonesia, and the Netherlands) show a more significant increase. Ecuador, for instance, has not applied any anti-avoidance rule until it introduced comprehensive transfer pricing rules in 2005. Therefore it increases from Category 0 to Category 5 over the considered time period.

When comparing the categories for each country in the first year that information is available and in the last year (2009), the distribution displayed in Figure 4 is found.

Figure 4: Development of categories over time



Considering the development over time, Figure 4 also shows that transfer pricing regulations became stricter. While in the first year of available information, 28 countries were attributed to categories 0, 1,

and 2, in the last year, it was only 12 countries. The greatest decrease over time was recognized by category 2, while category 3 denotes the highest increase. This means that many countries introduced a statutory documentation requirement.

The same diagram can be plotted for geographical areas (due to the different size of the areas, numbers are expressed in percent). Figure 5 displays the results for North and South America, Asia, and Australia, Figure 6 the results for Europe.

Figure 5: Categories in North and South America, Asia, and Australia

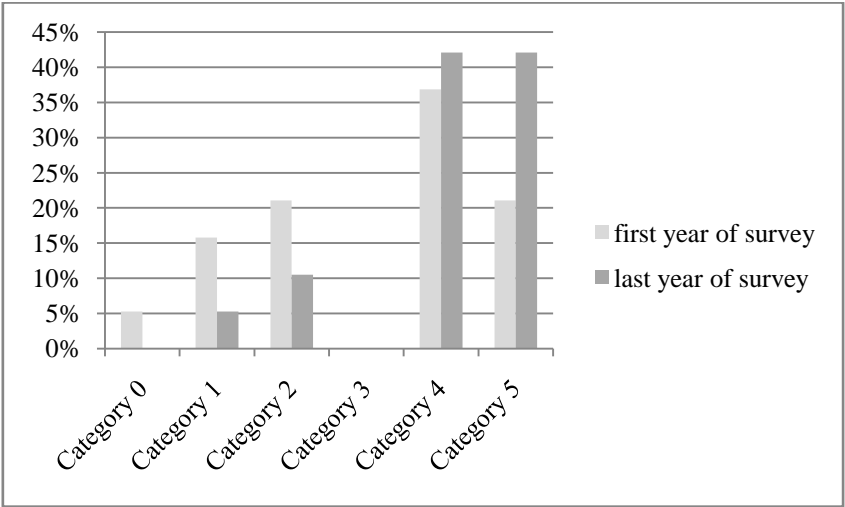
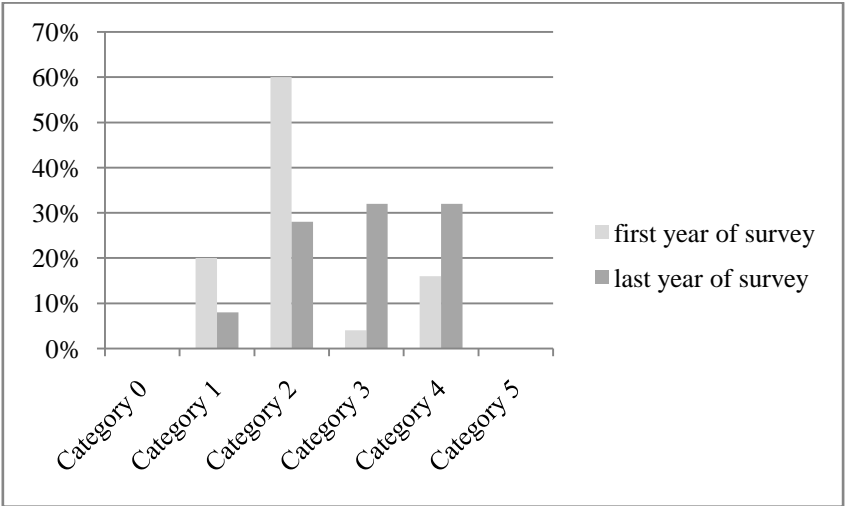


Figure 6: Categories in Europe



Figures 5 and 6 show again that the development in North America, South America, Asia, and Australia is different from the development in Europe. In the first group of countries, more than 80% of countries require disclosure of documentation, while in Europe it is only 32%. The increase of Category 3 can only be accounted to European countries since in American and Asian countries, a statutory requirement is in all cases connected with a disclosure. The findings are generally in line with the results found in the survey conducted by Ernst & Young where multinationals from the

United States, Mexico, India, and Argentina stated that they spend a lot of resources on preparing documentation.⁵⁶

6 Conclusion

- (1) As intercompany profit shifting offers opportunities for international tax planning, many countries focus on transfer pricing regulations in order to secure tax revenues. The survey conducted in this study underlines the increasing awareness and importance of transfer pricing regulations. The majority of countries introduced transfer pricing regulations in the last two decades. Only 7 out of the 44 considered countries do not impose transfer pricing regulations which may be explained by them being either low-tax or developing jurisdictions. Where present, transfer pricing regulations usually apply to foreign related parties only. An exception holds for those countries offering tax incentives where also domestic related parties are subject to the rules. In South America, also third parties in tax havens are often treated as related parties.
- (2) Regarding transfer pricing methods, there is only little variation between countries. The methods outlined by the OECD are mainly accepted. Only differences exist, however, in the priority of methods. While the majority of countries prefers the traditional methods over transactional profits methods, nine countries apply a best method rule.
- (3) Documentation requirements were introduced to a great extent in the considered time period. Southern American and Asian countries introduced them in connection with the transfer pricing regulations, and European countries mainly extended the scope of existing rules by documentation requirements. A disclosure of documents is mainly required in South America and Asia, in Europe only few countries require information included in the tax return.
- (4) Only twelve countries impose special transfer pricing penalties, especially with respect to documentation. The design of penalties is similar - usually a certain percentage on the tax adjustment, a late interest, and a fixed monetary fine on noncompliance - but the amounts vary notably. In case of fraud, penalties are often at least doubled.
- (5) The possibility to enter into advance pricing agreements is increasing with only nine countries not allowing for such agreements.
- (6) The categorization of transfer pricing regulations undertaken in this study shows that the regulations have become stricter over time. It seems that they are generally less strict in Europe as only 32% of countries fall under the highest categories, compared to more than 80% of countries outside of Europe.

⁵⁶ See Ernst & Young, 2010 Global Transfer Pricing Survey, p. 4.

Appendix⁵⁷

Table A1: Transfer Pricing Existence and Applicability

Country		National Regulations on Transfer Pricing and their Applicability								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
NORTH AND SOUTH AMERICA										
Argentina	Existence	TP regulations since 1998								
	Applicability	foreign related entities; entities in tax havens								
	Rel. Party	> 50%; de facto; common								
Brazil	Existence	TP regulations since 1997, but not arm's length principle, instead: maximum price ceilings and minimum gross income floors								
	Applicability	foreign related entities; entities in tax havens								
	Rel. Party	> 10%; common								
Canada	Existence	TP regulations since 1998								
	Applicability	foreign related entities								
	Rel. Party	n/a	n/a	n/a	n/a	n/a	n/a	> 50%; de facto; common		
Chile	Existence	TP regulations since 1997								
	Applicability	n/a	n/a	foreign related entities; entities in tax havens						
	Rel. Party	n/a	n/a	no threshold; de facto; common						
Colombia	Existence	n/a	n/a	n/a	1.1.2004: introduction of TP regulations					
	Applicability	n/a	n/a	n/a	foreign related entities; entities in tax havens					
	Rel. Party	n/a	n/a	n/a	> 50%; de facto; common					
Ecuador	Existence	general anti-avoidance rule which has never been applied in practice					1.1.2005: introduction of TP regulations			
	Applicability	-	-	-	-	foreign related entities			30.12.2007: foreign related entities; entities in tax havens	
	Rel. Party	-	-	-	-	de facto; common			30.12.2007: > 25%; de facto; common	
Mexico	Existence	TP regulations since 1996								
	Applicability	n/a	domestic and foreign related entities							
	Rel. Party	n/a	no threshold; de facto; common							
Peru	Existence	1.1.2001: TP regulations are introduced								
	Applicability	n/a	domestic and foreign related entities; entities in tax havens							
	Rel. Party	n/a	n/a	n/a	n/a	n/a	> 30%; de facto; common			
United	Existence	TP regulations since 1968								

⁵⁷ For references see end of Appendix.

Country		National Regulations on Transfer Pricing and their Applicability								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>States</u>	Applicability	foreign related entities								
	Rel. Party	no threshold; de facto; common								
Venezuela	Existence	anti-avoidance rule regarding imports/exports	28.12.2001: introduction of TP regulations							
	Applicability	foreign related entities	domestic and foreign related entities; entities in tax havens							
	Rel. Party	n/a	no threshold; de facto; common							
ASIA/AUSTRALIA										
<u>Australia</u>	Existence	TP regulations since 1981								
	Applicability	foreign related entities								
	Rel. Party	no threshold; de facto; common								
China	Existence	general anti-avoidance rule since 1991 (for foreign companies), 1993 (for domestic companies)							1.1.2008: introduction of TP regulations	
	Applicability	n/a	domestic and foreign related entities							
	Rel. Party	n/a	n/a	n/a	n/a	> 25%; de facto; common				
India	Existence	1.4.2001: introduction of TP regulations								
	Applicability	foreign related entities								
	Rel. Party	> 26%; de facto; common								
Indonesia	Existence	TP regulations since 1984								
	Applicability	domestic and foreign related entities								
	Rel. Party	> 25%; de facto; common								
<u>Japan</u>	Existence	TP regulations since 1986								
	Applicability	foreign related entities								
	Rel. Party	> 50%; de facto; common								
Malaysia	Existence	general anti-avoidance rule								1.1.2009: additional anti-avoidance rule is introduced
	Applicability	n/a	domestic and foreign related entities							
	Rel. Party	-	-	1.7.2003: no threshold; de facto; common						
Philippines	Existence	general anti-avoidance rule since 1939								
	Applicability	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Rel. Party	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a

Country		National Regulations on Transfer Pricing and their Applicability								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
Thailand	Existence	general anti-avoidance rule								
	Applicability	n/a	16.5.2002: domestic and foreign related entities							
	Rel. Party	n/a	16.5.2002: no threshold; de facto; common							
Vietnam	Existence	general anti-avoidance rule					28.1.2006: introduction of TP regulations			
	Applicability	foreign related entities			1.1.2004: domestic and foreign related entities					
	Rel. Party	-	-	-	-	-	> 20%; de facto; common			
EUROPE										
Austria	Existence	general anti-avoidance rule (OECD guidelines have been issued for guidance in 1996)								
	Applicability	no provision in national tax law; OECD: foreign related entities								
	Rel. Party	no provision in national tax law; OECD: no threshold; de facto; common								
Belgium	Existence	general anti-avoidance rule				19.7.2004: introduction of TP regulations				
	Applicability	n/a	n/a	n/a	n/a	foreign related entities				
	Rel. Party	n/a	n/a	n/a	n/a	no threshold; de facto; common				
Czech Republic	Existence	TP regulations since 1993								
	Applicability	domestic and foreign related entities								
	Rel. Party	> 25%; de facto; common								
Denmark	Existence	TP regulations since 1998								
	Applicability	n/a	domestic and foreign related entities							
	Rel. Party	n/a	> 50%; de facto; common							
Finland	Existence	general anti-avoidance rule						1.1.2007: introduction of TP regulations		
	Applicability	n/a	foreign related entities							
	Rel. Party	n/a	n/a	n/a	n/a	n/a	n/a	> 50%; de facto; common		
France	Existence	TP regulations since 1996								
	Applicability	foreign related entities								
	Rel. Party	n/a	no threshold; de facto; common							
Germany	Existence	TP regulations since 1983								
	Applicability	foreign related entities								
	Rel. Party	> 25%; de facto; common								
Greece	Existence	TP regulations since 1994								
	Applicability	domestic and foreign related entities								
	Rel. Party	-	-	-	-	-	-	-	-	-
Hungary	Existence	TP regulations since 1992								
	Applicability	domestic and foreign related entities								
	Rel. Party	> 50%; de facto; common								

Country		National Regulations on Transfer Pricing and their Applicability								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Ireland</u>	Existence	anti-avoidance rules specified for certain transactions (rule on foreign transactions is not applied in practice)								
	Applicability	n/a	domestic related entities subject to tax incentives							
	Rel. Party	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<u>Italy</u>	Existence	TP regulations since 1988								
	Applicability	foreign related entities								
	Rel. Party	n/a	no threshold; de facto; common							
<u>Luxembourg</u>	Existence	general anti-avoidance rule								
	Applicability	n/a	foreign related entities							
	Rel. Party	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<u>Netherlands</u>	Existence	general anti-avoidance rule	1.1.2002: introduction of TP regulations							
	Applicability	n/a	domestic and foreign related entities							
	Rel. Party	n/a	no threshold; de facto; common							
<u>Norway</u>	Existence	TP regulations since 1999								
	Applicability	n/a	domestic and foreign related entities							
	Rel. Party	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<u>Poland</u>	Existence	TP regulations since 1992								
	Applicability	domestic and foreign related entities								
	Rel. Party	no threshold; de facto; common				1.1.2004: > 5%; de facto; common				
<u>Portugal</u>	Existence	general anti-avoidance rule	1.1.2002: introduction of TP regulations							
	Applicability	n/a	domestic and foreign related entities							
	Rel. Party	n/a	> 10%; de facto; common							
<u>Romania</u>	Existence	general anti-avoidance rule since 1994				1.1.2004: introduction of TP regulations				
	Applicability	n/a	n/a	n/a	foreign related entities					
	Rel. Party	-	-	-	1.1.2004: > 25%; de facto; common					
<u>Russia</u>	Existence	TP regulations since 1999								
	Applicability	domestic and foreign related entities								
	Rel. Party	> 20%; de facto; common								
<u>Slovak Republic</u>	Existence	TP regulations since 1993								
	Applicability	foreign related parties								
	Rel. Party	n/a	> 25%; de facto; common							
<u>Slovenia</u>	Existence	general anti-avoidance rule					1.1.2005: introduction of TP regulations			
	Applicability	n/a	n/a	n/a	n/a	domestic and foreign related entities				
	Rel. Party	n/a	n/a	n/a	n/a	> 25%; de facto; common				

Country		National Regulations on Transfer Pricing and their Applicability								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Spain</u>	Existence	TP regulations since 1997								
	Applicability	n/a	domestic and foreign related entities							
	Rel. Party	n/a	n/a	n/a	n/a	n/a	n/a	1.12.2006: > 25%; de facto; common		
<u>Sweden</u>	Existence	general anti-avoidance rule since 1928							1.1.2007: introduction of TP regulations	
	Applicability	foreign related entities								
	Rel. Party	-	-	-	-	-	-	no threshold; de facto; common		
<u>Switzerland</u>	Existence	general anti-avoidance rule								
	Applicability	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Rel. Party	-	-	-	-	-	-	-	-	-
<u>Ukraine</u>	Existence	TP regulations since 1997								
	Applicability	n/a	n/a	n/a	n/a	n/a	n/a	domestic and foreign related entities		
	Rel. Party	n/a	n/a	n/a	n/a	n/a	n/a	> 20%; de facto; common		
<u>United Kingdom</u>	Existence	TP regulations since 1999								
	Applicability	foreign related entities				1.4.2004: domestic and foreign related entities				
	Rel. Party	n/a	n/a	> 40%; de facto; common						
Underlined countries are OECD member countries; information as of 1 July of the respective year.										
Existence: general anti-avoidance rule: arm's length principle stated in the national tax code; guidelines may be based on general anti-avoidance rules.										
TP regulations: in addition documentation rules, definition of methods, related entities etc. exist in the law										
Related Party: de facto: de facto control (control of management; exercise of significant influence); common: under common control ;										
Poland: related party definitions apply to cross-border transactions. slightly different for domestic transactions.										

Underlined countries are OECD member countries; information as of 1 July of the respective year.

Existence: general anti-avoidance rule: arm's length principle stated in the national tax code; guidelines may be based on general anti-avoidance rules.

TP regulations: in addition documentation rules, definition of methods, related entities etc. exist in the law

Related Party: de facto: de facto control (control of management; exercise of significant influence); common: under common control ;

Poland: related party definitions apply to cross-border transactions, slightly different for domestic transactions.

Source: own collection.

Table A2: Transfer Pricing Methods

Country		National Regulations on Transfer Pricing Methods								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
NORTH AND SOUTH AMERICA										
Argentina	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM			22.10.2003: CUP, RPM, Cost Plus, Profit Split, TNMM, shipment value					
	Priority	best method			best method, shipment value if applicable					
Brazil	Methods	CUP, RPM (fixed margins), Cost Plus (fixed margins)								
	Priority	method that yields lowest taxable income								
Canada	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								

Country		National Regulations on Transfer Pricing Methods								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
	Priority	transaction-based over profit-based								
Chile	Methods	CUP, Resale Price, Cost Plus								
	Priority	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Colombia	Methods	n/a	n/a	n/a	1.1.2004: CUP, RPM, Cost Plus, Profit Split, TNMM					
	Priority	n/a	n/a	n/a	1.1.2004: most appropriate method					
Ecuador	Methods	n/a	n/a	n/a	n/a	CUP, RPM, Cost Plus, Profit Split, TNMM				
	Priority	n/a	n/a	n/a	n/a	-	-	-	-	15.5.2008: CUP, RPM, Cost Plus, Profit Split, TNMM
Mexico	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	-	-	-	-	-	-	1.1.2007: transaction-based over profit-based, priority for CUP		
Peru	Methods	n/a	CUP, RPM, Cost Plus, other		1.1.2004: CUP, RPM, Cost Plus, Profit Split, TNMM					
	Priority	n/a	most appropriate method							
United States	Methods	CUP, RPM, Cost Plus, Profit Split, CPM								
	Priority	best method								
Venezuela	Methods	n/a	28.12.2001: CUP, RPM, Cost Plus, Profit Split, TNMM							
	Priority	n/a	most appropriate method, priority for CUP							
ASIA/AUSTRALIA										
Australia	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	transaction-based over profit-based, priority for CUP								
China	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM, other								
	Priority	most appropriate method								
India	Methods	1.4.2001: CUP, RPM, Cost Plus, Profit Split, TNMM, other								
	Priority	1.4.2001: most appropriate method								
Indonesia	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Japan	Methods	CUP, RPM, Cost Plus, Profit Split			1.1.2004: CUP, RPM, Cost Plus, Profit Split, TNMM					
	Priority	transaction-based over profit-based								
Malaysia	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	transaction-based over profit-based								
Philippines	Methods	n/a	n/a	n/a	n/a	CUP, RPM, Cost Plus, Profit Split, TNMM, other				
	Priority	n/a	n/a	n/a	n/a	most appropriate method				

Country		National Regulations on Transfer Pricing Methods									
		2001	2002	2003	2004	2005	2006	2007	2008	2009	
Thailand	Methods	n/a	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	n/a	transaction-based over profit-based								
Vietnam	Methods	8.3.2001: CUP, RPM, Cost Plus						1.1.2006: CUP, RPM, Cost Plus, Profit Split, TNMM			
	Priority	n/a	n/a	n/a	n/a	n/a	most appropriate method				
EUROPE											
Austria	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM									
	Priority	transaction-based over profit-based									
Belgium	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM									
	Priority	transaction-based over profit-based									
Czech Republic	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM									
	Priority	transaction-based over profit-based									
Denmark	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM									
	Priority	transaction-based over profit-based									
Finland	Methods	none specified in domestic law, but OECD guidelines recognized						1.1.2007: CUP, RPM, Cost Plus, Profit Split, TNMM			
	Priority	-	-	-	-	-	-	transaction-based over profit-based			
France	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM									
	Priority	transaction-based over profit-based									
Germany	Methods	CUP, RPM, Cost Plus, Profit Split						12.4.2005: CUP, RPM, Cost Plus, Profit Split, TNMM			
	Priority	transaction-based over profit-based									
Greece	Methods	n/a	n/a	n/a	n/a	n/a	n/a	CUP	CUP	1.1.2009: CUP, RPM, Cost Plus, Profit Split, TNMM	
	Priority	n/a	n/a	n/a	n/a	n/a	n/a	-	-	1.1.2009: transaction-based over profit-based, priority for CUP	
Hungary	Methods	CUP, RPM, Cost Plus, other									
	Priority	transaction-based over profit-based									
Ireland	Methods	none specified in domestic law									
	Priority	-	-	-	-	-	-	-	-	-	

Country		National Regulations on Transfer Pricing Methods								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Italy</u>	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	transaction-based over profit-based, priority for CUP								
<u>Luxem- bourg</u>	Methods	none specified in domestic law, but OECD guidelines recognized								
	Priority	-	-	-	-	-	-	-	-	-
<u>Nether- lands</u>	Methods	n/a	CUP, RPM, Cost Plus, Profit Split, TNMM							
	Priority	n/a	transaction-based over profit-based							
<u>Norway</u>	Methods	none specified in domestic law, but OECD guidelines recognized								
	Priority	-	-	-	-	-	-	-	-	-
<u>Poland</u>	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	transaction-based over profit-based								
<u>Portugal</u>	Methods	n/a	CUP, RPM, Cost Plus, Profit Split, TNMM							
	Priority	n/a	transaction-based over profit-based							
<u>Romania</u>	Methods	n/a	n/a	n/a	1.1.2004: CUP, RPM, Cost Plus, Profit Split, TNMM					
	Priority	n/a	n/a	n/a	1.1.2004: transaction-based over profit-based, priority for CUP					
<u>Russia</u>	Methods	CUP, RPM, Cost Plus								
	Priority	CUP, RPM, Cost Plus								
<u>Slovak Republic</u>	Methods	1.1.2001: CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	n/a	n/a	n/a	n/a	transaction-based over profit-based				
<u>Slovenia</u>	Methods	n/a	n/a	n/a	n/a	1.1.2005: CUP, RPM, Cost Plus, Profit Split, TNMM				
	Priority	n/a	n/a	n/a	n/a	1.1.2005: transaction-based over profit-based				
<u>Spain</u>	Methods	CUP, RPM, Cost Plus, Profit Split						1.12.2006: CUP, RPM, Cost Plus, Profit Split, TNMM		
	Priority	transaction-based over profit-based, priority for CUP						1.12.2006: transaction-based over profit-based		
<u>Sweden</u>	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	transaction-based over profit-based								
<u>Switzer- land</u>	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	transaction-based over profit-based								
<u>Ukraine</u>	Methods	n/a	n/a	n/a	n/a	CUP, RPM, Cost Plus				
	Priority	n/a	n/a	n/a	n/a	CUP preferred				
<u>United Kingdom</u>	Methods	CUP, RPM, Cost Plus, Profit Split, TNMM								
	Priority	transaction-based over profit-based								

Underlined countries are OECD member countries; information as of 1 July of the respective year

CUP: Comparable Uncontrolled Price, RPM: Resale Price Method, TNMM: Transfer Net Margin Method

Source: own collection.

Table A3: Transfer Pricing Documentation

Country		National Regulations on Documentation Requirements								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
NORTH AND SOUTH AMERICA										
Argentina	Stat. Requ.	statutory requirement since 1999								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	1.1.2001: long	long	long	long	long	long	long	long	long
Brazil	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	long	long	long	long	long	long	long	long	long
Canada	Stat. Requ.	statutory requirement								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	short	short
Chile	Stat. Requ.	no statutory requirement								
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
Colombia	Stat. Requ.	no statutory requirement, but required in practice			1.1.2004: statutory requirement					
	Disclosure	no	no	no	1.1.2004: yes	yes	yes	yes	yes	yes
	Content	-	-	-	short	short	short	short	short	short
Ecuador	Stat. Requ.	n/a	n/a	n/a	n/a	1.1.2005: statutory requirement				
	Disclosure	no	no	no	no	1.1.2005: yes	yes	yes	yes	yes
	Content	-	-	-	-	long	long	long	long	long
Mexico	Stat. Requ.	statutory requirement since 1997								
	Disclosure	1.1.2001: yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	long	long	long	long	long	long	long	long	long
Peru	Stat. Requ.	1.1.2001: statutory requirement								
	Disclosure	n/a	n/a	n/a	n/a	yes	yes	yes	yes	yes
	Content	n/a	n/a	n/a	n/a	short	1.1.2006: long	long	long	long
United States	Stat. Requ.	statutory requirement since 1994								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	short	short
Venezuela	Stat. Requ.	no statutory requirement	1.1.2002: statutory requirement							
	Disclosure	no	1.1.2002: yes	yes	yes	yes	yes	yes	yes	yes

Country		National Regulations on Documentation Requirements								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
	Content	-	short	short	short	short	short	short	short	short
ASIA/AUSTRALIA										
<u>Australia</u>	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	short	short
China	Stat. Requ.	no statutory requirement, but required in practice								1.1.2008: statutory requirement
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	1.1.2008: long	long
India	Stat. Requ.	1.4.2001: statutory requirement								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	long	long	long	long	long	long	long	long	long
Indonesia	Stat. Requ.	no statutory requirement								1.1.2008: statutory requirement
	Disclosure	no	1.1.2002: yes	yes	yes	yes	yes	yes	yes	yes
	Content	-	short	short	short	short	short	short	short	1.1.2009: long
<u>Japan</u>	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	short	short
Malaysia	Stat. Requ.	no statutory requirement		1.7.2003: no statutory requirement, but required in practice						
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	short	short
Philippines	Stat. Requ.	n/a	n/a	n/a	n/a	n/a	n/a	no statutory requirement, but required in practice		
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
Thailand	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
Vietnam	Stat. Requ.	no statutory requirement, but required in practice					28.1.2006: statutory requirement			
	Disclosure	no	no	no	no	no	28.1.2006: yes	yes	yes	yes
	Content	-	-	-	-	-	short	short	short	short
EUROPE										
<u>Austria</u>	Stat. Requ.	n/a	n/a	n/a	n/a	no statutory requirement, but required in practice				
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Belgium</u>	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	no	no	no	no	no	no	no	no	no

Country		National Regulations on Documentation Requirements								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
	Content	-	-	-	-	-	-	-	-	-
<u>Czech Republic</u>	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Denmark</u>	Stat. Requ.	statutory requirement since 1999								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	short	short
<u>Finland</u>	Stat. Requ.	n/a	n/a	no statutory requirement, but required in practice				1.1.2007: statutory requirement		
	Disclosure	no	no	no	no	no	no	no	no	1.1.2009: yes
	Content	-	-	-	-	-	-	-	-	short
<u>France</u>	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Germany</u>	Stat. Requ.	no statutory requirement, but required in practice		1.1.2003: statutory requirement						
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Greece</u>	Stat. Requ.	no statutory requirement							1.1.2008: statutory requirement	
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Hungary</u>	Stat. Requ.	no statutory requirement, but required in practice		1.1.2003: statutory requirement						
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Ireland</u>	Stat. Requ.	no statutory requirement								
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Italy</u>	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	short	short
<u>Luxembourg</u>	Stat. Requ.	n/a	n/a	n/a	n/a	no statutory requirement, but required in practice				
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Netherlands</u>	Stat. Requ.	no statutory requirement	1.1.2002: statutory requirement							

Country		National Regulations on Documentation Requirements								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Norway</u>	Disclosure	no	1.1.2002: yes	yes	yes	yes	yes	yes	yes	yes
	Content	-	short	short	short	short	short	short	short	short
	Stat. Requ.	n/a	n/a	n/a	no statutory requirement, but required in practice				1.1.2008: statutory requirement	
	Disclosure	no	no	no	no	no	no	no	1.1.2008: yes	yes
	Content	-	-	-	-	-	-	-	short	short
<u>Poland</u>	Stat. Requ.	1.1.2001: statutory requirement								
	Disclosure	7.5.2001: yes	yes	yes	yes	yes	yes	yes	yes	yes
	Content	short	short	short	short	short	short	short	short	short
<u>Portugal</u>	Stat. Requ.	n/a	1.1.2002: statutory requirement							
	Disclosure	no	1.1.2002: yes	yes	yes	yes	yes	yes	yes	yes
	Content	-	short	short	short	short	short	short	short	short
<u>Romania</u>	Stat. Requ.	n/a	n/a	no statutory requirement, but required in practice				1.7.2007: statutory requirement		
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Russia</u>	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Slovak Republic</u>	Stat. Requ.	n/a	n/a	n/a	n/a	no statutory requirement, but required in practice				1.1.2009: statutory requirement
	Disclosure	no	no	no	no	no	no	no	no	
	Content	-	-	-	-	-	-	-	-	
<u>Slovenia</u>	Stat. Requ.	n/a	n/a	n/a	n/a	n/a	n/a	1.9.2006: statutory requirement		
	Disclosure	n/a	n/a	n/a	n/a	n/a	n/a	yes	yes	yes
	Content	n/a	n/a	n/a	n/a	n/a	n/a	short	short	short
<u>Spain</u>	Stat. Requ.	no statutory requirement, but required in practice						1.12.2006: statutory requirement		
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Sweden</u>	Stat. Requ.	no statutory requirement, but required in practice						1.1.2007: statutory requirement		
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Switzer-land</u>	Stat. Requ.	no statutory requirement, but required in practice								
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>Ukraine</u>	Stat. Requ.	no statutory requirement								

Country		National Regulations on Documentation Requirements								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
<u>United Kingdom</u>	Stat. Requ.	statutory requirement since 1999								
	Disclosure	no	no	no	no	no	no	no	no	no
	Content	-	-	-	-	-	-	-	-	-
Underlined countries are OECD member countries; information as of 1 July of the respective year statutory requirement: documentation requirement is included in the national tax law (not administrative guidelines) short: a summary or an overview over transactions has to be submitted long: full documentation has to be submitted; in some cases, only a short content is applicable to small enterprises or low incomes (Ecuador, Mexico, Peru)										
Source: own collection.										

Table A4: Deadlines of Transfer Pricing Documentation

Country		National Regulations on Submission Deadlines								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
NORTH AND SOUTH AMERICA										
Argentina	Full Doc.	-	-	-	-	-	-	-	-	-
	Tax Return	5 months after fiscal year end			8 months after fiscal year end					
Brazil	Full Doc.	-	-	-	-	-	-	-	-	-
	Tax Return	30 September	30 June							
Canada	Full Doc.	within 3 months of request								
	Tax Return	6 months after fiscal year end								
Chile	Full Doc.	-	-	-	-	-	-	-	-	-
	Tax Return	-	-	-	-	-	-	-	-	-
Colombia	Full Doc.	n/a	n/a	n/a	n/a	within 15 days of request				
	Tax Return	-	-	-	2 September	30 June		11 July		22 July
Ecuador	Full Doc.	n/a	n/a	n/a	n/a	-	-	-	-	-
	Tax Return	-	-	-	-	within 12 months of tax return				within 6 months of tax return
Mexico	Full Doc.	-	-	-	-	-	-	-	-	-

Country		National Regulations on Submission Deadlines								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
Peru	Tax Return	n/a	31 July	31 May			n/a	n/a	30 June	
	Full Doc.	n/a	n/a	n/a	n/a	n/a	-	-	-	-
	Tax Return	n/a	n/a	n/a	n/a	n/a	n/a	25 July	31 July	
United States	Full Doc.	n/a	within 30 days of request							
	Tax Return	15 th of third month after fiscal year end								
Venezuela	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Tax Return	-	30 June							
ASIA/AUSTRALIA										
Australia	Full Doc.	n/a	n/a	n/a	n/a	within 2 weeks of request				
	Tax Return	6 months after fiscal year end		5 months after fiscal year end		15 th of seventh month after fiscal year end				
China	Full Doc.	n/a	within 60 days of request						-	-
	Tax Return	4 months after fiscal year end								5 months after fiscal year end
India	Full Doc.	n/a	-	-	-	-	-	-	-	-
	Tax Return	n/a	31 October							
Indonesia	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	-
	Tax Return	-	3 months after fiscal year end							4 months after fiscal year end
Japan	Full Doc.	case by case								
	Tax Return	2 months after fiscal year end								
Malaysia	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	within 30 days of request		
	Tax Return	6 months after fiscal year end				7 months after fiscal year end				
Philippines	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	within 45 days of request
	Tax Return	-	-	-	-	-	-	-	-	-
Thailand	Full Doc.	n/a	n/a	n/a	n/a	within 60 days of request				
	Tax Return	-	-	-	-	-	-	-	-	-
Vietnam	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	within 30 days of request		
	Tax Return	-	-	-	-	-	2 months after fiscal year end	90 days after fiscal year end		
EUROPE										
Austria	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	within 3 weeks of request	
	Tax Return	-	-	-	-	-	-	-	-	-
Belgium	Full Doc.	n/a	within 30 days of request							
	Tax Return	-	-	-	-	-	-	-	-	-
Czech Republic	Full Doc.	n/a	n/a	n/a	n/a	within 15 days of request				
	Tax Return	-	-	-	-	-	-	-	-	-

Country		National Regulations on Submission Deadlines								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Denmark</u>	Full Doc.	n/a	n/a	n/a	n/a	n/a	within 60 days of request			
	Tax Return	6 months after fiscal year end								
<u>Finland</u>	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	within 60 days of request		
	Tax Return	-	-	-	-	-	-	-	-	4 months after fiscal year end
<u>France</u>	Full Doc.	within 60 days of request								
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Germany</u>	Full Doc.	n/a	n/a	within 60 days of request						
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Greece</u>	Full Doc.	-	-	-	-	-	-	-	n/a	n/a
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Hungary</u>	Full Doc.	n/a	n/a	n/a	n/a	n/a	within 3 days of request			
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Ireland</u>	Full Doc.	-	-	-	-	-	-	-	-	-
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Italy</u>	Full Doc.	n/a	within 15 days of request							
	Tax Return	n/a	n/a	10 months after fiscal year end				7 months after fiscal year end		
<u>Luxem- bourg</u>	Full Doc.	n/a	n/a	n/a	n/a	within 30 days of request				
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Nether- lands</u>	Full Doc.	n/a	within 3 months of request							
	Tax Return	-	6 months after fiscal year end							
<u>Norway</u>	Full Doc.	n/a	n/a	n/a	n/a	within 4 weeks of request				within 45 days of request
	Tax Return	-	-	-	-	-	-	-	31 May	31 May
<u>Poland</u>	Full Doc.	within 7 days of request								
	Tax Return	-	9 months after fiscal year end	3 months after fiscal year end						
<u>Portugal</u>	Full Doc.	n/a	n/a	n/a	n/a	within 10 days of request				
	Tax Return	-	31 May							
<u>Romania</u>	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Russia</u>	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	within 10 days of request	
	Tax Return	-	-	-	-	-	-	-	-	-

Country		National Regulations on Submission Deadlines								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Slovak Republic</u>	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	within 60 days of request
	Tax Return	-	-	-	-	-	-	-	-	-
Slovenia	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	within 90 days of request		
	Tax Return	n/a	n/a	n/a	n/a	n/a	n/a	3 months after fiscal year end		
<u>Spain</u>	Full Doc.	case by case								
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Sweden</u>	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	within 30 days of request	
	Tax Return	-	-	-	-	-	-	-	-	-
<u>Switzer-land</u>	Full Doc.	n/a	n/a	n/a	n/a	n/a	n/a	n/a	within 30 days of request	
	Tax Return	-	-	-	-	-	-	-	-	-
Ukraine	Full Doc.	-	-	-	-	-	-	-	-	-
	Tax Return	-	-	-	-	-	-	-	-	-
<u>United Kingdom</u>	Full Doc.	n/a	within 30 days of request							
	Tax Return	-	-	-	-	-	-	-	-	-
Underlined countries are OECD member countries; information as of 1 July of the respective year										

Underlined countries are OECD member countries; information as of 1 July of the respective year

Source: own collection.

Table A5: Transfer Pricing Penalties

Country		National Regulations on Transfer Pricing Penalties								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
NORTH AND SOUTH AMERICA										
<u>Argentina</u>	TP Penalty	no	no	no	14.11.2003: yes	yes	yes	yes	yes	yes
	Adjustment	50-100% of unpaid tax; up to 10 times unpaid tax in case of fraud; late interest (3% per month)			14.11.2003: 100-400% of unpaid tax; up to 10 times unpaid tax in case of fraud; late interest (3% per month)					
	Documentation	n/a	fixed fine for not filing return		14.11.2003: up to ARS 450,000 (~USD 150,000) for noncompliance					
Brazil	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	late interest	75-150% of unpaid tax; late interest (federal interest rate)							

Country		National Regulations on Transfer Pricing Penalties								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
	Documentation	n/a	112.5-225% of unpaid tax if no documentation						112.5-225% of unpaid tax if no documentation ; 5% of transaction price for incorrect or omitted information; 0.02% of net revenue per day for failure to submit online	
<u>Canada</u>	TP Penalty	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Adjustment	10% of TP adjustment if certain threshold is exceeded (CAD 5mio. or 10% of gross revenue); late interest								
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Chile	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	up to 30% of unpaid tax; up to 300% in case of fraud; late interest (1.5% per month)								
	Documentation	-	-	-	-	-	-	-	-	-
Colom- bia	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	n/a	n/a	up to 160% of unpaid tax						
	Documentation	n/a	n/a	n/a	n/a	1.1.2005: 1% of total value of transaction or 0,5% of net worth for wrong or late documentation (max. 30,000 TU) and for no filing of documentation (max. 40,000 TU)				
Ecuador	TP Penalty	no	no	no	no	no	no	no	30.12.2007: yes	yes
	Adjustment	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Documentation	-	-	-	-	-	-	-	30.12.2007: up to USD 15,000 for incorrect or late filing of tax return	
<u>Mexico</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	50-100% of unpaid tax; late interest							50-75% of unpaid tax; late interest	
	Documentation	~MXN 47,640-95,820 (~USD 4,100-8,300) for failure to file tax return								
Peru	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	n/a	up to 50% of unpaid tax							
	Documentation	n/a	n/a	n/a	up to 30 TU (~USD 30,000) for noncompliance				up to 0.6% of net income for noncompliance (max up to 25 TU (~USD 27,500))	
<u>United States</u>	TP Penalty	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Adjustment	20-40% of unpaid tax								
	Documentation	-	-	-	-	-	-	-	-	-
Vene-	TP Penalty	no	no	no	no	no	no	no	no	no

Country		National Regulations on Transfer Pricing Penalties								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
zuela	Adjustment	n/a	25-200% of unpaid tax; late interest; imprisonment							
	Documentation	n/a	28.12.2001: 300-500 TU for failure to submit documentation; 10-50 TU for failure to file return (1 TU=~USD 16)							
ASIA/AUSTRALIA										
Australia	TP Penalty	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Adjustment	10-25% of unpaid tax; 50% of unpaid tax in case of fraud; late interest								
	Documentation	-	-	-	-	-	-	-	-	-
China	TP Penalty	no	no	no	no	no	no	no	1.1.2008: yes	yes
	Adjustment	late interest (0.2% per day)	1.5.2002: late interest (0.05% per day); up to 500% of unpaid tax in case of fraud						1.1.2008: additional special interest levy: federal interest rate + 5% on tax adjustment; late interest (0.05% per day); up to 500% of unpaid tax in case of fraud	
	Documentation	up to CNY 10,000 for late filing of tax return; up to CNY 50,000 for serious offense								
India	TP Penalty	1.4.2001: yes	yes	yes	yes	yes	yes	yes	yes	yes
	Adjustment	1.4.2001: 100-300% of unpaid tax								
	Documentation	1.4.2001: 2% of aggregate value of international transactions for incorrect documentation; INR 100,000 (~USD 2,200) for failure to submit accountant's report								
Indonesia	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	late interest (2% per month, up to 48% of unpaid tax); 200-400% of unpaid tax in case of fraud; imprisonment								
	Documentation	-	-	-	-	-	-	-	-	-
Japan	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	10-15% of unpaid tax; 35% of unpaid tax in case of fraud; late interest (max. 7.3% per year)								
	Documentation	-	-	-	-	-	-	-	-	-
Malaysia	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	70-100% of unpaid tax; up to 300% of unpaid tax in case of fraud; imprisonment								1.1.2009: up to 45% of unpaid tax
	Documentation	15-70% of unpaid tax for incorrect return						1.1.2007: 15-45% of unpaid tax for incorrect return		
Philip-pines	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	n/a	n/a	n/a	n/a	25% surcharge on unpaid tax; 50% surcharge in case of fraud; late interest (20% per year)				
	Documentation	-	-	-	-	-	-	-	-	-
Thailand	TP Penalty	no	no	no	no	no	no	no	no	no

Country		National Regulations on Transfer Pricing Penalties								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
	Adjustment	up to 200% of unpaid tax; late interest (1.5% per month (max. 100% of unpaid tax))								
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	TP Penalty	no	no	no	no	no	no	no	no	no
Vietnam	Adjustment	up to 500% of unpaid tax in case of fraud; late interest (0.1% per day)						n/a	10% of unpaid tax; 100-300% of unpaid tax in case of fraud; late interest (0.05% per day)	
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
EUROPE										
Austria	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	2% of unpaid tax; late interest (2% above federal interest rate)								
	Documentation	-	-	-	-	-	-	-	-	-
Belgium	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	late interest (7% per year)								
	Documentation	10-200% of unpaid tax for failure to file (correct) tax return								
Czech Republic	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	0,05-0,2% of unpaid tax per day for first 500 days; afterwards late interest (140% of federal interest rate)						1.1.2007: 20% of unpaid tax; late interest (federal interest rate +14%)		
	Documentation	up to CZK 2 mio. for non-financial obligations that are not fulfilled			n/a	n/a	n/a	n/a	n/a	n/a
Denmark	TP Penalty	no	no	no	no	no	2.4.2006: yes	yes	yes	yes
	Adjustment	up to 200% of unpaid tax; 10% surcharge on unpaid tax; late interest (0.6% per month); imprisonment			surcharge on unpaid tax (5.7% in 2004, 5.4% in 2005, 5.3% in 2006, 5.8% in 2007, 6.3% in 2008, 6.1% in 2009); late interest (0.6% per month in 2004, 0.5% in 2005-2006, 0.6% in 2007-2009); imprisonment					
	Documentation	n/a	n/a	n/a	n/a	n/a	2.4.2006: 200% of costs saved; minimum fine is increased by 10% of TP adjustment if applicable			
Finland	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	5-30% of TP adjustment; late interest (market rate)								
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	up to EUR 25,000 for noncompliance		
France	TP Penalty	yes	yes	yes	yes	yes	yes	yes	yes	yes
	Adjustment	40% of unpaid tax; 80% of unpaid tax in case of fraud; late interest (0.75% per month, 0.4% per month starting 2007)								
	Documentation	EUR 7,500 per year for insufficient documentation					1.1.2006: EUR 10,000 per year for insufficient documentation			
Germany	TP Penalty	no	no	no	1.1.2004: yes	yes	yes	yes	yes	yes
	Adjustment	late interest (0.5% per month)								
	Documentation	-	-	-	1.1.2004: 5-10% of TP adjustment if failure to submit documentation, min. EUR 5,000; late submission: EUR 100 per day, max. EUR 1 mio.					

Country		National Regulations on Transfer Pricing Penalties								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Greece</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	10% of TP adjustment								
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	2% of unpaid tax per day for inaccurate return (max. 200% of unpaid tax)	18.12.2008: 10% of the value of the transaction for not filing documentation; 2% per day for inaccurate return (max. 200% of unpaid tax)	
<u>Hungary</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	50% of unpaid tax; late interest (200% of federal interest rate)								
	Documentation	n/a	n/a	n/a	1.1.2004: up to HUF 2 mio. (~USD 10,000) per transaction for noncompliance					
<u>Ireland</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	late interest			1.8.2002: 20-100% of unpaid tax; late interest (11.75% per year, 9.96% per year in 2009)					
	Documentation	-	-	-	-	-	-	-	-	-
<u>Italy</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	100-240% of unpaid tax; late interest; 15.4.2000: imprisonment								
	Documentation	-	-	-	-	-	-	-	-	-
<u>Luxembourg</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	n/a	n/a	n/a	n/a	n/a	n/a	late interest (0.6% per month)		
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<u>Netherlands</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	25-100% of unpaid tax; late interest								
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<u>Norway</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	n/a	up to 60% of unpaid tax; late interest (7% per year)							
	Documentation	-	-	-	-	-	-	-	-	-
<u>Poland</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	TP adjustment is taxed at 50%; late interest (200% of federal interest rate)								
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<u>Portugal</u>	TP Penalty	no	no	no	no	no	no	no	no	no

Country		National Regulations on Transfer Pricing Penalties								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
	Adjustment	20-100% of unpaid tax, up to 200% in case of fraud (max. EUR 30,000, fraud: EUR 110,000); late interest (7% per year in 2002-2004, 4% per year since 2005)								
	Documentation	n/a	n/a	n/a	up to EUR 100,000 for noncompliance					
	TP Penalty	no	no	no	no	no	no	no	8.2.2008: yes	yes
Romania	Adjustment	1.9.2000: late interest (0.15% per day)	1.10.2001: 0.5% of unpaid tax per month; 30.10.2001: late interest (0.06% per day)				1.1.2006: 0.1% per day on unpaid tax			
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	8.2.2008: up to RON 14,000 (~EUR 3,900) for no documentation	
	TP Penalty	no	no	no	no	no	no	no	no	no
Russia	Adjustment	20% of unpaid tax in case of fraud; late interest (1/300 of federal interest rate per day)								
	Documentation	-	-	-	-	-	-	-	-	-
	TP Penalty	no	no	no	no	no	no	no	no	no
<u>Slovak Republic</u>	Adjustment	n/a	n/a	n/a	1.1.2004: late interest (300% of federal interest rate)					31.12.2008: late interest (300% of ECB interest rate)
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	TP Penalty	no	no	no	no	no	no	no	no	no
Slovenia	Adjustment	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Documentation	n/a	n/a	n/a	n/a	n/a	n/a	up to SIT 6mio. (~EUR 24,000) for wrong or late documentation		
	TP Penalty	no	no	no	no	no	no	no	no	19.2.2009: yes
<u>Spain</u>	Adjustment	50-150% of unpaid tax; late interest								19.2.2009: 15% of TP adjustment
	Documentation	-	-	-	-	-	-	-	-	19.2.2009: EUR 1,500 per missing information
	TP Penalty	no	no	no	no	no	no	no	no	no
<u>Sweden</u>	Adjustment	10-40% of unpaid tax								
	Documentation	-	-	-	-	-	-	-	-	-
	TP Penalty	no	no	no	no	no	no	no	no	no
<u>Switzer-</u>	TP Penalty	no	no	no	no	no	no	no	no	no

Country		National Regulations on Transfer Pricing Penalties								
		2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>land</u>	Adjustment	late interest		100-300% of unpaid tax in case of fraud; late interest						
	Documentation	-	-	-	-	-	-	-	-	-
Ukraine	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	n/a	n/a	n/a	n/a	n/a	n/a	up to 100% of unpaid tax		
	Documentation	-	-	-	-	-	-	-	-	-
<u>United Kingdom</u>	TP Penalty	no	no	no	no	no	no	no	no	no
	Adjustment	late interest (market rate)			1.1.2004-31.3.2006: no penalties are imposed			late interest (market rate)		
	Documentation	up to 100% of unpaid tax for incorrect tax return						up to 100% of unpaid tax for incorrect tax return		
Underlined countries are OECD member countries; information as of 1 July of the respective year										
TU: tax unit										

Source: own collection.

Table A6: Statute of Limitations

Country	National Regulations on Statute of Limitations								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
NORTH AND SOUTH AMERICA									
Argentina	n/a	5 years from filing year end							
Brazil	n/a	5 years from filing date							
Canada	n/a	7 years from filing date							
Chile	n/a	n/a	n/a	n/a	n/a	3 years from filing date			
Colombia	2 years from filing date; 5 years if not filed								
Ecuador	n/a	n/a	n/a	n/a	n/a	3 years from filing date; 6 years if not filed			
Mexico	5 years from filing date								
Peru	n/a	n/a	4 years from filing year end; 6 years if not filed						
United States	n/a	up to 6 years from filing date; unlimited in case of fraud							
Venezuela	n/a	n/a	4 years from filing date; 6 years if noncompliance						
ASIA/AUSTRALIA									
Australia	n/a	unlimited							
China	n/a	up to 10 years from tax year end							
India	n/a	3 years from tax year end					n/a	45 months from tax year end	

Country	National Regulations on Statute of Limitations								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
Indonesia	10 years from tax year end							1.1.2008: 5 years from tax year end; unlimited in case of fraud	
<u>Japan</u>	n/a	6 years from filing date							
Malaysia	n/a	n/a	6 years from tax year end; unlimited in case of fraud						
Philippines	n/a	n/a	3 years from filing date; 10 years in case of fraud						
Thailand	n/a	up to 5 years from filing date; 10 years if not filed							
Vietnam	n/a	n/a	n/a	n/a	n/a	up to 5 years from tax year end			
EUROPE									
<u>Austria</u>	up to 15 years from tax year end				1.1.2005: up to 10 years from tax year end				
<u>Belgium</u>	n/a	3 years from tax year end; 5 years in case of fraud							1.1.2009: 3 years from tax year end; 7 years in case of fraud
<u>Czech Republic</u>	up to 17 years from filing year end			1.1.2004: up to 15 years from filing year end					
<u>Denmark</u>	n/a	5 years and 4 months from tax year end							
<u>Finland</u>	n/a	n/a	6 years from tax year end						
<u>France</u>	3 years from tax year end; 10 years in case of fraud								
<u>Germany</u>	4 years from filing year end; 10 years in case of fraud								
<u>Greece</u>	n/a	n/a	n/a	n/a	n/a	n/a	4 years from filing year end; 10 years in case of fraud		
<u>Hungary</u>	5 years from filing year end								
<u>Ireland</u>	n/a	6 years from tax year end			1.1.2005: 4 years from filing year end				
<u>Italy</u>	4 years from filing year end; 8 years in case of fraud								
<u>Luxembourg</u>	n/a	n/a	n/a	n/a	5 years from filing date; 10 years in case of fraud				
<u>Netherlands</u>	n/a	5 years from tax year end; 12 years if foreign income							
<u>Norway</u>	n/a	10 years from tax year end							
<u>Poland</u>	n/a	n/a	5 years from filing year end						
<u>Portugal</u>	n/a	4 years from tax year end							
<u>Romania</u>	n/a	5 years from filing date; 10 years in case of fraud							
<u>Russia</u>	n/a	3 years from tax year end							
<u>Slovak Republic</u>	n/a	n/a	n/a	n/a	up to 10 years from filing year end				
<u>Slovenia</u>	n/a	n/a	n/a	n/a	n/a	n/a	up to 10 years from tax year end		

Country	National Regulations on Statute of Limitations								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Spain</u>	n/a	4 years from filing date							
<u>Sweden</u>	n/a	6 years from tax year end							
<u>Switzerland</u>	up to 15 years from filing year end								
<u>Ukraine</u>	n/a	n/a	n/a	n/a	3 years from tax year end; unlimited in case of fraud				
<u>United Kingdom</u>	n/a	n/a	6 years from tax year end; 21 years in case of fraud						
Underlined countries are OECD member countries; information as of 1 July of the respective year									

Source: own collection

Table A7: Advance Pricing Arrangements

Country	National Regulations on Advance Pricing Agreements								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
NORTH AND SOUTH AMERICA									
<u>Argentina</u>	not available	not available	not available	not available	not available	not available	not available	not available	not available
<u>Brazil</u>	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral
<u>Canada</u>	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Chile</u>	not available	not available	not available	not available	not available	not available	not available	not available	not available
<u>Colombia</u>	n/a	n/a	n/a	n/a	unilateral	5.1.2006: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Ecuador</u>	not available	not available	not available	not available	not available	not available	not available	30.12.2007: unilateral	unilateral
<u>Mexico</u>	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Peru</u>	not available	not available	not available	not available	not available	not available	unilateral	unilateral	unilateral
<u>United States</u>	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Venezuela</u>	not available	28.12.2001: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral

Country	National Regulations on Advance Pricing Agreements								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
ASIA/AUSTRALIA									
<u>Australia</u>	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
China	unilateral	unilateral	unilateral	unilateral	3.9.2004: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
India	not available	not available	not available	not available	not available	not available	not available	not available	not available
Indonesia	not available	not available	not available	not available	not available	not available	not available	not available	not available
<u>Japan</u>	1.6.2001: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
Malaysia	not available	not available	not available	not available	not available	not available	not available	not available	1.1.2009: unilateral, bilateral
Philippines	not available	not available	not available	not available	not available	not available	not available	not available	not available
Thailand	n/a	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
Vietnam	n/a	n/a	n/a	n/a	n/a	unilateral	unilateral	unilateral	unilateral
EUROPE									
<u>Austria</u>	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral
<u>Belgium</u>	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral
<u>Czech Republic</u>	not available	not available	not available	not available	not available	1.1.2006: unilateral	unilateral	unilateral	unilateral
<u>Denmark</u>	n/a	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Finland</u>	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral
<u>France</u>	bilateral	bilateral	bilateral	1.1.2004: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Germany</u>	not available	not available	not available	not available	not available	5.6.2006: bilateral	bilateral	bilateral	bilateral
<u>Greece</u>	not available	not available	not available	not available	not available	not available	not available	not available	not available
<u>Hungary</u>	not available	not available	not available	not available	not available	not available	1.1.2007: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral

Country	National Regulations on Advance Pricing Agreements								
	2001	2002	2003	2004	2005	2006	2007	2008	2009
<u>Ireland</u>	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral
<u>Italy</u>	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral
<u>Luxembourg</u>	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral
<u>Netherlands</u>	1.4.2001: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Norway</u>	not available	not available	not available	not available	not available	not available	not available	not available	not available
<u>Poland</u>	not available	not available	not available	not available	1.1.2005: unilateral	1.1.2006: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Portugal</u>	not available	not available	not available	not available	not available	not available	not available	not available	17.7.2008: unilateral, bilateral
<u>Romania</u>	not available	not available	not available	not available	not available	not available	12.6.2007: unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Russia</u>	not available	not available	not available	not available	not available	not available	not available	not available	not available
<u>Slovak Republic</u>	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral	unilateral
<u>Slovenia</u>	not available	not available	not available	not available	not available	not available	not available	not available	not available
<u>Spain</u>	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
<u>Sweden</u>	not available	not available	not available	not available	not available	not available	not available	not available	not available
<u>Switzerland</u>	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
<u>Ukraine</u>	n/a	n/a	n/a	n/a	n/a	n/a	unilateral	unilateral	unilateral
<u>United Kingdom</u>	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral	unilateral, bilateral
Underlined countries are OECD member countries; information as of 1 July of the respective year not available: no kind of advance pricing agreement is available, an exception might exist under a double tax treaty unilateral: an advance ruling by the domestic tax authorities is available bilateral: an advance pricing agreement between two jurisdictions is available (can be extended to a multilateral agreement)									

Source: own collection.

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